PROSPECTS FOR FURTHER DEVELOPMENT OF THE IMPLEMENTATION OF THE RIGHT TO GOOD GOVERNANCE

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Abstract
The article analyzes in detail the prospects for further development of the implementation of the right of good governance on the basis of the diversity of opinions existing in the legal literature and international practice. The result of a special legal approach to the analysis of the normative regulation of the right of good governance has led to its study separately from other human rights and freedoms. In addition, new scientific research in the field of good governance creates the conditions for the emergence of various phenomena. At the same time, the article notes that presently a number of significant changes have occurred in the implementing of the right to good governance. These changes have created conditions for the emergence of new approaches and trends related to this right. These trends have given rise to a number of promising prospects in the field of good governance law.

Keywords: *good governance, Charter of Fundamental Rights, Court of European Union, European Ombudsman, human rights, judicial control, administrative procedures.*

Presently, a number of significant changes have occurred in the field of realizing the right to good governance. These changes have created conditions for the emergence of new approaches and trends related to this right. These trends have led to the following perspectives on the right to good governance:

- The recent success of the new paradigm of administrative law will have a positive impact on the detection of misbehavior in public administration and the adoption of effective decisions, including serving common interests of the development of society [1].

- Another approach to the common interest is that in the implementation of administrative procedures it is necessary to take into account public and private interests. The fact is that a public official who adheres to the principles of good governance must fully adhere to transparency, objectivity.

- Streamlining rules and procedures to help in good governance, using the scientific study of human thinking. Perhaps, in the future we will be able to draw on cognitive psychology to identify the cognitive illusion, better structure the administrative procedure, and propose the necessary standard of judicial control. In this sense, the best or prudent (sharp, efficient) regulation that is derived from good governance is more based on the development of the behavioral sciences (especially psychology and economics).

New scientific research in the field of good governance creates the conditions for the emergence of various phenomena [2]. Different phenomena refer to the use of behavioral sciences to improve the effectiveness of regulation. Great Britain and the USA are very active in this field, creating special units for the development of research in this field. In September 2015 (in connection with 'using behavioral (i.e., behavior-oriented) scientific ideas to best serve the American people'), former US President B. Obama's decision is a good example of this trend.

In this sense, one of the issues that will be implemented in the future and which are currently of particular interest is good governance, administrative procedures and cognitive limitations. Cognitive limitations combine cognitive psychology and law [3].

According to some experts, bad governance and bad administrative decisions can be the result of errors in people's opinions and in the choice between actors of power. The basic premise of cognitive psychological theory is that the human brain is a limited information processor that cannot successfully process all stimuli passing through its edges. To make the right decisions, public officials need to learn how to correctly distribute the missing (deficient) cognitive resources. This question is complicated by the two main strategies that people (including civil

servants) use to make the most of their cognitive abilities: mental shortcuts (heuristics) and organizational principles (schemes).

Heuristics basically consist of simple rules of thumb that make it easy to quickly, almost reflexively, turn around information. Schemes consist of collecting and organizing information scenarios that help people focus on information.

Relying on heuristics and schemes allows people to process a variety of complex stimulus efficiently. Although these rules are most of the time aimed at serving people, they can lead to systematic errors of opinion, which psychologists often call 'cognitive illusions'. Although applying experience to the decision-making process can help avoid cognitive illusions.

When decisions are made in an organizational situation, institutional forms can hinder the effectiveness of cognitive constraints. A government that tries to avoid bad governance and bad decisions (solutions) needs to be focused and structured. The fact is that the increase in the efficiency of public control and judicial control does not go unnoticed in the process of decision-making by administrative bodies, which ultimately leads to the adoption of positive, lawful decisions for society. Effective judicial control encourages public authorities to seek alternative courses of action that it considers relevant to its decision.

- Great importance of computers in decision-making. This is the realm of predictive information analysis. Future research will define automated decision-making, leading to a discussion of the boundaries of discrete powers and computers.

- More active development of specific indicators to measure the level of real, effective management in accordance with some of the already existing initiatives. The role of citizens should be decisive in setting the level of good government that government agencies should achieve [4]. As for the performance indicator, broader indicators are used internationally (e.g. the World Bank Good Governance Indicators).

- Expansion of obligations towards the creation of rules concerning the right to good governance. Cases for better regulation or smart regulation have been developed by the European Union (EU) without any contact with the right to good governance. In our view, better or smarter regulation is linked to the right to good governance, because good regulations are the result of good governance and prevent future corruption [5].

The EU Court of Justice in several of its decisions denied the existence of the right to be heard during the development of its rules as a component of the right to good governance. In this regard, the ECJ has pointed out that the right to good governance deriving from this situation does not include the process of adopting measures of general application. The Decree of 12 June 2015 emphasizes that the right to be heard belonged to a specific person in an administrative procedure cannot be considered in the context of the legislative process that led to the adoption of general laws.

But with the necessary caution, the EU Court of Justice has begun to take the first steps in relation to the right to good governance within certain obligations. In this direction, the judgments of Spain v. Council (C-310/04), Sungro SA and Council (T-252/07, T271/07 and T-272/07) [6] can be noted.

These judgments state that when the EU institutions have discretionary powers, they must prove to the court that at the time of the adoption of the law they were actually exercising their discretionary powers, which implies taking into account all relevant factors and conditions (para. 122 of the case of Spain v. Council).

Although it reminds us of the necessary care or necessary caution as integral components of the right to good governance. The ECJ held that the breach of such obligation constituted a breach of the principle of proportionality, and not of the right to good governance.

But here we run into typical confusion. The fact is that the duty of taking care and the principle of compliance are different. We have already discussed this before. Therefore, the right

to good governance should play a role in the judicial review of regulatory impact assessment and should be the point that closes the scope for better or prudent regulation.

- *Ubi Jus Ibi Remedium*: If you have rights, you also have legal remedies. The same is true of the right to good governance. The point here is that the victim can go to court and request a trial due to lack of necessary care. The trend should be that in order to maintain the quality of administrative behavior, it is necessary to open legal status to everyone. This rule will emphasize the importance of managing rights as part of modern citizenship.

- It can be assumed that in the future the level of judicial control will increase. The measures to be taken will be strengthened to avoid formal approaches to the necessary legal procedure, to exercise the necessary care or proper cautiousness. In this sense, the American experience can be of interest both in positive and negative aspects. While US public law does not recognize 'good governance' as a legal term, American case law and American jurisprudence use a similar concept in their understanding that administrative procedures are important to the quality of decisions.

In the United States, the Administrative Procedure Act plays an important role in informal litigation procedures. Informal procedures make up a high percentage of all administrative procedures. Necessary legal procedural requirements in relation to these procedures will not apply at all times. Its effect depends on the type of decision (it is applied not in rule-making, but in the case of a court decision), the existence of a right and whether it is a right to life, liberty or property. But in all cases, the judiciary is considered the main instrument, since it is it that ultimately determines the level of review of administrative decisions. Thus, the last word on the level of exactingness to the good development of State functions through administrative procedures remains with the court.

Restrictions on revision of discretionary power increase the importance of administrative procedures. Courts can protect individual rights and cooperate in the field of good governance without violating the principle of functional differentiation through discussion of administrative procedural aspects.

In the United States, the Administrative Procedure Act sets out the procedural framework for federal agencies. Particularly in relation to rule-making (but with similar arguments in the case of formal and informal judgments), where discretion is broader, case law expands the requirements necessary to reach good decisions (solutions). Since the 1970s, courts, even the US Supreme Court, have required agencies to pay particular attention to relevant factors and interests. Case law established the obligation to hear citizens, to respond to their comments. In addition, as a basis for ensuring the correct rules, it would force us to study (research) the regulation carefully before making a decision [7].

This judicial approach is known as the 'hard review' doctrine, although the term 'hard review' originally meant a precise scrutiny (research) that an agency had to respond to, today it is used to refer to a more (often) detailed and intensive investigation, where the courts often use in administrative cases. The hard-review doctrine, known as the 'informed decision-making' standard, is widely used in contemporary American public law [8].

The hard-review doctrine is also referred to as the adequate look test in connection with law-making. Courts usually accept it to avoid arbitrary agency decisions.

In this sense, future EU case law may use a more specific definition of necessary caution, using the example of the US. However, future EU case law must take into account that the courts have had a significant impact on the US administrative law system. The rules have a high rate of challenge and denial. The courts impose serious procedural requirements and require extensive explanations.

Some authors have emphasized that in these cases there is judicial activity and the balance between the separations of powers is violated. Another group of authors argue that litigation

leads to delays and creates a waste of time and costs, in addition, it paralyzes public policy in some sectors, harms the public interest (health and environmental protection, etc.) [9].

There are other opinions in the scientific literature. It is believed that the rigid approach requires large material costs. Proponents of this approach, citing jurisprudence, believe that the new judicial requirements made law-making more time-consuming and costly, but the costs were considered possible not only in terms of democratic benefits, but also in terms of increasing the efficiency of results. When faced with legal requirements for transparency and participation, the administrator will almost automatically perform a regulatory cost-benefit analysis in terms of efficiency.

The US example shows that judicial control is important and necessary for good governance, but at the same time, ironically, it can be a contributing factor to bad governance. Thus, it is necessary to regulate the fairness of procedures and efficiency, avoiding unnecessary delays and costs, but guaranteeing protection and good governance. This should be an important issue for legislators and courts.

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