

RESEARCH ARTICLE:

An analysis on the elements which converge towards European administrative harmonization

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ABSTRACT

The need for legislative harmonization and implementation of EU policies causes the systems of the Member States to undergo a continuous process of change and adaptation.

A fundamental principle, which imposes increasingly in the activity of the public administration and has direct influence on decision-making process of the public authorities, is that of the right to good administration.

Codification of services principle - principle according to which the government should try to help and to guide citizens and act in their support and service, avoiding unnecessary procedures, cumbersome, time consuming and saving thus time and effort for citizens and officials alike - would help meet the legitimate expectations of citizens and would benefit both them and the administration through improving service and increasing efficiency. Therefore it should be increased the degree of awareness regarding EU citizens' right to good administration, including through competent information services and networks of the European Commission

KEYWORDS: *EU administrative law, EU administrative procedure, principles, harmonization.*

1. Introduction

Principles of European administrative law

The legal systems of European countries are influenced by national political history and they are areas less susceptible to influences from comparative law, in the absence of strong, persuasive incentives.

In the European Union it has emerged and developed a new and own law system - European law - based and attached at the same time to the acknowledged law systems - the Roman-Germanic system and common law system and which manifests substantial influence on the law of Member States¹.

Currently, due to the need of legislative harmonize and enforcement of EU policies, the systems of the Member States are subject to a continuous process of change and adaptation. Underlying this is the need to respect the fundamentals of the European Union and achieve the common goal to promote peace, values and the well-being of its peoples, economic, social and territorial cohesion and solidarity among its peoples.

A fundamental principle which imposes increasingly in public administration activity and has direct influence on government decision-making process is that of the right to good administration. It enjoys an express recognition from two entities with different skills: at European level, through the provisions of art. 41 of the Charter of Fundamental Rights of the European Union - which protects the citizen in his relations with EU institutions and bodies and national level through the Recommendation adopted in 2007 by the Committee of Ministers of the Council of

Europe - which protects citizens in their relations with national authorities.

According to the provisions of art. 41 of the Charter of Fundamental Rights of the European Union:

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

- the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

This fundamental right is implemented in the relations between the citizens and the national authorities through the 2007 Recommendation of the Committee of Ministers of the Council of Europe on good administration. In the preamble, the Committee of Ministers considers that the public administrations plays a key role in democratic societies, they are active in various fields, that their activities affect the rights and interests of private persons, these are some of the reasons why it was necessary to enshrining the right to good administration.

The Committee of Ministers concludes that it is desirable to synthesize under the form of a right to good administration, all rights recognized to private persons in

¹Fuerea, A. 2004. *Manualul Uniunii Europene*, Second edition, Bucharest, Romania: Ed. Universul Juridic, p. 5.

relation to public authorities and that the requirements of such a right can be consolidated into one legal instrument of general application, reflecting the general principles of the rule of law: legality, equality, impartiality, proportionality, legal certainty, reasonable time, transparency etc.

Administrative decisions should be formulated in a simple, clear, accessible, understandable mode. In addition, they must contain the factual and legal reason that led to their adoption, as a possibility given to both people and the competent authorities to carry out administrative and judicial control and understand the reasoning in the decision making process.

Decisions must be communicated to the interested parties and the authority must indicate deadlines and appeals that they have available.

Also, the Recommendation provides the possibility of regulating administrative remedy prior to control of the courts, ways which may be voluntary or compulsory.

An important aspect of the right to good administration is the accountability of the public authorities for the decisions they issued. The public authorities must remedy the damage sustained by individuals as a result of illegal administrative decisions or negligence on the part of the administration or its officials.

Translating these recommendations supposes that:

– Good governance implies and can only be ensured through a quality regulation, which must be appropriate, consistent and clear, accessible and comprehensible;

– Good governance is always conditioned by the quality of the organization of administrative structures, the effectiveness and efficiency of the human, material and financial management.

Other attempts to identify and systematize the fundamental principles of

administrative law can be found in the studies of the Organisation for Economic Cooperation and Development (OECD) and, in particular, in the document entitled *Judicial control of administrative authorities in Europe*².

Among the major principles underlying the rule of law and the European Administrative Law, we point out:

a) The pre-eminence of the rule of law. This principle requires that each rule or decision applied by the administration to be consistent with rules of a higher value. In case of incompatibility, the authorities must not apply them, and the courts must sanction them. The document guarantees the stability and protection against political change;

b) Subordination of individual decisions to the general rules. This principle ensures predictability and limits the arbitrary power in the administrative actions, and ensures compliance with defined objectives and known actions. This does not exclude adapting to the particular case;

c) Legal security, principle which refers, in particular, to the prohibition to apply retroactively rules or decisions;

d) The principle of legitimate expectations. This principle requires the administration to respect its commitments or promises and to take into account legitimate expectations that it has created for public in general or individuals. The consequence of this rule is that the administration must follow its own instructions and respect the rights acquired and situations established under legitimate conditions;

e) The principle of equality. This principle should be understood as a rule for

²Woehrling, J. M. 2006. *Judicial control of administrative authorities in Europe: towards a common model*, SIGMA pub., Support for Improvement in Governance and Management, joint initiative of the OECD and the European Union.

non-discrimination for unjustified reasons, but also as an obligation to grant special treatment when necessary, in order to ensure true equality. The administration should avoid arbitrary exercise of power and unjustified differences in exercising its power of appreciation;

f) The principle of impartiality. Impartiality is an extension of the principle of equality and means that public authorities should be neutral regarding the special interests and only serve public interests;

g) The principle of proportionality, which is the legal implementation of the ideas of fairness and opportunity. Thus:

- the measures of the public authorities must be likely and appropriate in order to ensure the possibility of the expected outcome;

- a comparison should be made permanently between the advantages and disadvantages of a project;

- administration should seek to minimize violations of individual interests, which its actions might involve .

h) The principle of responsibility. The administration is responsible for its actions and harmful consequences that could occur through:

- A poor behaviour;
- A breach of a normative rule.

i) The principle of fairness. This principle implies respect for the adversarial nature of the procedure and the right to a fair trial;

j) The principle of transparency. Administration should disseminate information on decisions that it will take or that it has taken and to ensure access to administrative documents not subject to legitimate secrecy.

The jurisprudence of the EU courts and the European Court of Human Rights imposed, in turn, a number of principles in administrative matters, including in connection with the settlement of disputes in which the public administration was involved due to legal acts adopted.

2. Towards a European Law of Administrative Procedure

Through its Resolution adopted on the 15th of January 2013³, the European Parliament asked the Commission to present - under Article 298 of the Treaty on the Functioning of the European Union - a proposal for a regulation regarding a European Law of Administrative Procedure, issuing recommendations detailed in its annex. Thus:

Recommendation 1 on the aims and scope of the regulation states that the regulation should guarantee the right to good administration through a transparent, efficient and independent, administration, based on a European Law of Administrative Procedure.

The Regulation would apply to institutions, bodies, offices and agencies (“EU administration”) in their relations with the public and, therefore, its scope should be limited to direct administration.

This regulation should codify the fundamental principles of good administration and to regulate the procedure applied by the Union's administration when dealing with individual cases where individuals or legal persons take part and other situations where a person has a direct or personal contact with the EU administration.

According to **Recommendation 2** on the relationship between the regulation and the sectoral instruments, the regulation should include a universal set of principles and procedures applicable as a *de minimis* rule when there is a *lex specialis*.

The guarantees granted to individuals under sectoral instruments must never provide lower protection than those of the Regulation.

³<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0004&language=EN>

Recommendation 3 concerns the general principles which should guide the administration:

- The principle of legality: the Union's administration shall act in accordance with the law and apply the rules and procedures laid down in the Union legislation. The administrative competences are based on the law and their content complies with the law;

- The taken decisions or the adopted measures shall never be arbitrary or driven by purposes which are not based on law or which are not motivated by the public interest;

- The principle of non-discrimination and equal treatment: the Union's administration shall avoid any unjustified discrimination regarding people based on nationality, gender, race, colour, ethnic or social origin, language, religion or belief, political or other opinion, disability, age or sexual orientation; People who are in a similar situation are treated similarly. Differences in treatment are only justified by objective characteristics of the matter;

- The principle of proportionality: The Union's administration takes decisions which affect the rights and interests of persons only when necessary and to the extent necessary to achieve the objective pursued;

- When taking decisions, officials shall ensure a fair balance between the interests of private persons and the general interest, they cannot impose administrative or economic burdens disproportionate compared to the expected benefit;

- The principle of impartiality: the Union's administration is impartial and independent. It shall refrain from any arbitrary action adversely affecting citizens and from any preferential treatment for any reason;

- The Union Administration must always act in the interest of the Union and for the public good and ensure a fair

balance between the interests of different categories of citizens. No action is guided by personal interest (including financial), by family or national, or by political pressure;

- The principle of consistency and legitimate expectations: the Union's administration has consistent behaviour and follows its normal administrative practice, which is made public. When there are legitimate grounds for distancing from normal administrative practice in individual cases, it should present a valid statement containing the reasons underlying this distancing;

- The legitimate and reasonable expectations that citizens may have by virtue of the way in which the Union's administration has acted in the past are being respected;

- The principle of respect for privacy: the Union's administration respects the privacy of citizens in accordance with Regulation (EC) no. 45/2001⁴;

- The Union's Administration refrains from processing personal data for non-legitimate purposes or from transmitting such data to unauthorized third parties;

- The principle of fairness: it should be respected as a fundamental legal principle, indispensable for creating a climate of trust and predictability in the relations between individuals and administration;

- The principle of transparency: the Union's administration is opened. It records administrative procedures and properly registers the correspondence received and sent, the received documents and the taken decisions and measures. All contributions from advisory bodies and stakeholders should be made publicly available. The requests regarding the access to documents

⁴http://www.iss.europa.eu/fileadmin/euiss/documents/Data_protection_documents/Regulation_45_2001.pdf

are treated in accordance with the general principles and limits laid down in Regulation (EC) no. 1049/20011;

- The principle of efficiency and service: the actions of the Union's administration are guided by the criteria of efficiency and public service.

The staff members advise the public on how to treat a matter which falls under their competence.

In the event of receiving a request on an issue for which they are not responsible, they will direct the applicant to the competent service.

Recommendation 4 refers to the rules that guide administrative decisions.

Thus, regarding the initiation of administrative procedures, it states that they may be taken by the Union's administration on its own initiative or at the request of an interested party.

Regarding the confirmation of receipt: requests for individual decisions shall be confirmed in writing, stating the deadline for adopting the decision. There are also indicated the consequences of failure to adopt decision within the deadline ("administrative silence").

In case of incomplete applications, the confirmation will indicate a deadline to remedy the deficiency or absence of a document.

In terms of impartiality of administrative decisions, it is stated that no member of the staff should take part in an administrative decision about which it has a financial interest.

Any conflict of interest is communicated by the respective staff member to the immediate superior, who may decide to exclude the concerned staff member from the procedure, given the special circumstances of the case.

An interested member of the public may request that an official may not participate in a decision that will affect individual interests of the concerned person. In this sense, the request is

submitted in writing and shall state the reasons on which it is based. The direct superior officer takes a decision after hearing the concerned official.

Appropriate deadlines for resolving conflicts of interest should be set.

Regarding the right to be heard, it is recommended for the rights of the defence to be respected at every stage of the procedure. If the Union's administration takes a decision that will directly affect the rights or interests of individuals, the concerned persons are given the opportunity to express their views in writing or orally before the decision, if necessary, or if they choose this, with the assistance of a person of their choice.

Regarding the right of access to personal files: an interested party shall be granted full access to its file. It should be up to the interested party to determine which non-confidential documents are relevant.

With respect to deadlines: Administrative decisions are taken within a reasonable time and without delay. The limits are set in the corresponding rule which governs each specific procedure. If there is no deadline set, the procedure should not exceed three months from the date of the decision, if it was initiated *ex officio*, or from the date of the request from the interested party.

If a decision cannot be taken within that period for objective reasons, such as the need to ensure time to remedy the deficiencies of an application, the complexity of the issues raised, the obligation to suspend the procedure pending the decision of a third party etc., the concerned person shall be informed and the decision is taken as soon as possible.

Regarding the form of administrative decisions: administrative decisions are made in writing and have a clear, simple and understandable form. They are written in the language chosen by the recipient, provided that it is one of the official languages of the Union.

The obligation to state reasons: administrative decisions must show clearly the grounds on which they are based. They indicate the relevant facts and their legal basis. They must include an individual statement of reasons. If this is not possible because many people are concerned by similar decisions, standard communications should be allowed. In this case, however, it should be given an individual statement of reasons to any citizen who requests it explicitly.

Regarding the notification of administrative decisions: administrative decisions affecting the rights and interests of individuals are notified in writing to the persons concerned when they are adopted.

On indication of the remedies available: administrative decisions clearly state - when Union legislation so provides - the existence of remedies and describe the procedure followed in this case, also the name and office address of the person or department to which the remedies have to be introduced and the deadline for their introduction.

Where appropriate, administrative decisions mentions the possibility of legal procedures and / or of submission of a complaint to the European Ombudsman.

Recommendation 5 concerns the review and correct of own decisions.

The regulation should include the possibility for the Union's administration to correct a drafting error, arithmetic or similar, at any time, at its own initiative or following a request by the concerned person.

Also, it is necessary to insert provisions on the rectification of administrative decisions on other grounds, clearly differentiating between the procedure for reviewing decisions adversely affecting a person's interests and those which are beneficial to that person.

Recommendation 6 on the form and publicity to be given to the regulation, states that it should be written in a clear and concise way and it should be easily understood by the public, being adequately advertised on the websites of each institution, body, office and agency of the Union.

3. Conclusion

In recent doctrine it was appreciated that simplifying the law, seen as antidote to the increasing complexity of the process of law and administrative practices, represents a priority for public authorities. At the same time, it was felt that the emphasis on this concept must be understood as an echo of the current movement of state reform. It was cautioned that the excessive use of this concept, legally unlimited, could action contrary to the stated intentions to clarify the rules of law.

Currently, an urgent problem of the EU is the lack of trust from citizens, which may affect its legitimacy, whereas the European Union must provide citizens with quick, clearly and visible answers to respond to their concerns.

The quality of the law depends on the editorial quality of the normative acts and on their accessibility in the conditions of changes they suffer.

At European level there is a process to strengthen the normative texts, without legal effect, but there is also a coding movement that allows the strengthening of legal certainty and increases citizens' accessibility, contributing at the same time, on a political level to the increase of the citizens' adhesion to the European construction.

The Codification of the services principle - principle according to which the administration should try to help and to guide citizens and act in their support and service, to act with appropriate courtesy and therefore avoid, unnecessary, cumbersome, time consuming procedures, saving thus time and effort of both citizens and officials - would help meet the legitimate expectations of citizens and would benefit both them and the administration through improved services and increased efficiency.

Therefore it should be increased the degree of awareness regarding EU citizens'

right to good administration, including through competent information services and networks of European Commission. After joining the European Union in Romania, the normative coding process begun with civil, criminal procedure, must be continued with public administration procedures and specific procedures, in line with the European efforts and the standards of the rule of law and for the Europe administrative harmonization based on common principles of law .

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