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THE RIGHT TO GOOD ADMINISTRATION IN THE COURT OF JUSTICE OF THE EUROPEAN UNION CASE LAW

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Abstract:
The provisions of the Lisbon Treaty highlight that, at present, the Union has as objectives, not only an unitary economic development, but also strengthening the observance of peoples' fundamental rights, hence, implicitly, the right to good administration. The Court of Justice of the European Union has analyzed over time, in its decisions, the emergence and development of the good administration principle, its fundamental elements, and impossibility of framing it clearly in a definition, and, not least, turning the principle of good administration into a fundamental right through the Charter of Fundamental Rights of the European Union. At European level, citizens of the EU member states, but also those from third countries thus benefit from a right to good administration in the relations with European Union institutions and bodies, according to Article 41 of the Charter of Fundamental Rights of the European Union. The same should be the proceeding at internal level. Each Member State of the European Union should concern itself about identifying and promoting the most adequate measures for ensuring good governance and good administration. By identifying and applying at national level the principles governing the public administration activity at European level can be created the requisites for a national public administration that is transparent and efficient, close to the needs and interests of its citizens and that could be considered an integral part of the European public administration.

Key words: right to good administration, the European Union, the CJEU case-law, the Charter of Fundamental Rights of the EU, European public administration, common standards of the public administration.

JEL classification: H63, J18, K23, K38

1. A SHORT INTRODUCTION

In the European states, the process of modernizing public administration is under way, especially since their legal systems have to align with the new requirements regulated by the ***European right to good administration*** [1] enshrined in the Charter of Fundamental Rights of the European Union [2].

At the European Union level there have been designed and approved a number of rules as concerns the functioning of its institutions, considering the acknowledgement of need for closeness to citizens and the observance of their fundamental rights. The same should be the proceeding at internal level. Each Member State of the European Union should concern itself about identifying and promoting the most adequate measures *for ensuring a good governance and a good administration*. By identifying and applying at national level the principles governing the public administration activity at European level, there can be created the requisites for a national public administration that is transparent and efficient, close to the needs and interests of its citizens. Although some authors of public law state that also within the European Union are still being found situations where the principle of transparency is not sufficiently observed and the administrative procedure is yet burdensome.

The EU functioning involves determined efforts by Member States to create that European area that would ensure all European citizens a better living environment, through *effective governance and administration*. Consequently, the main objective of the Romanian administrative law should be the *full integration within the European administrative law* [Tofan, 2014, 3], more specifically, in that *European administrative space* identified at the level of the European Union Member States, by absorbing the common standards of public administration, defined by law and strengthened through responsible practice and mechanisms [Tofan, 2006, 33].

In order to understand the concept of *good administration*, are of importance the *common principles applicable to public administration,* identified and promoted especially by national and European courts. *The part played by the Court of Justice of the European Union in this field should be emphasized* since, from the Union's beginnings, the main European jurisdiction has played a very important role in *identifying the principles applicable to administrative law*, the provisions of EU treaties not being able to cover all situations that may occur in practice, and the Union legislation needed to be interpreted uniformly. The Court defines and redefines *the general principles of administrative law applicable to the Member States*, the interpretation of European legislation provisions often leading to a change of the manner in which certain principles applicable to administration are understood by the Member States. Therefore is of special importance to analyze the way in which these principles have been taken from national laws, have evolved and have been subsequently implemented in the national systems of law [Bobaru, 2011] .

Thus, through its rich case law [3], the Court identified a number of principles with which all the European Union member states should comply [Alexandru, 2008, 233]: ***principle of legality, principle of proportionality, principle of legal certainty, non-discrimination principle, the right to be heard within the decision-making procedures from administration, responsibility of the public administration,*** etc. Analyzing the extent to which the administrative principles promoted by the case law of the European Union's Court of Justice can be found at the level of the Member States' juridical system, it can be talked or not about the existence of a common *European administrative space* [Cardona, 2009, 4]. The principles identified by the Court of Justice of the European Union define the standards concerning the public administration organization and management, as well as the efficiency of relations among the administration and citizens [Bălan et al., 2010, 25].

2. BRIEF ANALYSIS OF THE INFLUENCE OF THE CJEU CASE LAW IN PROMOTING THE RIGHT TO GOOD ADMINISTRATION IN THE EUROPEAN ADMINISTRATIVE SPACE

Looking back at the CJEU case law it can be found that the judges of this court have contributed over the years to identifying and developing the principles which are, at the moment, essential elements of *good administration*.

Thus, in the case C-55/70 [4] is put forward the *general principle of good administration*, the applicant stating that the contested decision is contrary to this principle, according to which the *public authority going wrong should use its best efforts to remedy its mistakes*. Also in this case is invoked the *principle of equal treatment*, which the public authorities should observe in relations with their employees.

In the joined cases C-33/79 and C-75/79 [5] were brought up the *principles of legality, equality of rights before a public authority and the importance of a good administration*, considering the need to give the same treatment to officials who are in the same situation from the viewpoint of vocational qualifications, but also the obligation to justify its decision.

Also, the CJEU decision in Case C 186/87 [6] had a significant impact on the evolution of the *principle of equality* taking into account the *discrimination criterion based on nationality*. The British nationals Cowan was the victim of an assault at the exit of a subway station while he was in France as a tourist. Since the aggressors have not been identified, Cowan required compensation from the Commission of Compensation for Victims of Crime based on the French Code of Criminal Procedure. The Commission rejected his request, arguing that it is not a French citizen, nor a citizen of another country with which the French state would have had a reciprocity agreement in this regard. Also Cowan did not even have his residence in France. Cowan invoked the Community law (Article 12 of the Treaty establishing the European Community). The Court of Justice of the European Community reminded that through forbidding the discrimination on grounds of nationality it is intended to be obtained an *equality of treatment among the nationals of Member States*.

This Community Court judgment has emphasized, even since 1987, that all nationals of the Union's Member States should enjoy ***equal rights*** from the Member States' institutions, regardless of their nationality and domicile, so as the fundamental principles of the Union to be truly observed. It has therefore been applied the **principle of equality** before the law for all persons living within the Union's territory and being nationals of the EU Member States.

In Case C 177/88 [7], the CJEU shown that an employer directly violates the *principle of equal treatment* if they refuse to employ a female candidate who, had previously been considered apt for that work, just because she is pregnant. The court thus found that that person was discriminated against because she was a woman, which is strictly forbidden in both national and European legislation.

The principle of proportionality has been invoked quite much by the CJEU, eventually being recognized as a *general principle of the Union legislation.* Thus, in Case C-331/88 [8], the CJEU stated that: "**the principle of proportionality is one of the general principles of Community law**. On the strength of this principle, the legality of establishing certain limitations as concerns the conduct of a particular economic activity is subject to the condition that the prohibitory measures to be appropriate and necessary for the public objective protected by the legislation in this case; where there is a possibility to choose among several measures considered adequate, it should be resorted to seeking the least burdensome, and the disadvantages should not be disproportionate to the purpose intended" [Dobrinescu, 2013].

Likewise, in Case C 184/99 [9], the Nivelles Labor Court addressed the CJEU two preliminary questions on the interpretation of Articles 12, 17 and 18 of the Treaty establishing the European Community (TEC). Grzelczyk, a French citizen came to study in Belgium, had been self-supporting during the first three years of study, working in various places. In the last year of study, in order to focus on the study, he applied for *minimex,* a social security benefit. This has been originally granted to him, then being withdrawn on the ground that he is an European Community national registered as a student. The Court reminded that the Belgian citizen who would not have worked but would have been in the same position as Grzelczyk would have received that social security benefit, hence it has occurred a *discrimination based on nationality*. Therefore, the European Court has ruled for the protection of all persons, regardless of their nationality, in exercising their rights and applying legal regulations equally.

In Case C 144/2004 [10], the CJEU decided that the principle of equal treatment and principle of proportionality are breached since the only criterion mentioned in the German law for the conclusion of employment contracts on fixed term was the one related to age (52 years), which excludes from a stable situation on the labor market a significant number of workers during an important time of their career.

Thus it is considered that the discrimination of a person based on age infringes the general principle of equal treatment from which should benefit all persons living or carrying out an activity within the European Unity. Establishing the legal criteria regarding the retirement age for certain professional categories should comply with the new European requirements through a motivation that is objective, reasonable and proportionate to the aim pursued.

In Case C-290/07 P, the judges annulled the decision of the Court of First Instance of the European Communities 29 March 2007, Scott / Commission (T 366/00), and referred the case to the European Union Court to be rejudged, reasoned by the fact that it had been infringed the *obligation of diligence and impartiality* by the Commission [11], by not requiring the relevant documents in order to settle the case.

In another case of the CJEU, C-33/07 [12], it is expressly stipulated that "from the constant case law of the Court it follows that a measure restricting the right to free movement cannot be justified but if it complies with the **principle of proportionality** ... [the Community legislation] does not oppose to any national regulation that enables restricting the right of a national from a Member State ... provided, on the one hand, the behavior of that national to be a real, present and sufficiently serious threat to a fundamental interest of the society and, on the other hand, the restrictive measure taken into account to be capable of guaranteeing the attainment of the objective

intended and **not to exceed the framework of what is necessary for its attainment**." [Şandru et al., 2013, 269-273]

In Case C-308/07 P [13] we find the CJEU insight on the components of the *principle of good administration*, but also many references to the decisions of the European Court of Human Rights, thus demonstrating once again the close relation between the two European legal systems. In this case the CJEU judged on an appeal brought by a former representative of the European Parliament against the Ruling of the Court of First Instance from 24.04.2007, in Case T-132/06, a rulingn by which the Court dismissed the application brought by the Appellant for the annulment of the Decision of the Secretary General of the European Parliament dated 22.03.2006, which regulated the reimbursement of parliamentary allowances paid unaccountably. Among other things, a ground of appeal raised by the Appellant was that the Parliament had breached Article 20 of the Code of Good Administrative Behavior, which establishes the obligation to notify the decisions that affect the rights or interests of individuals. The Court dismissed that ground as obviously ungrounded, invoking the voluntary nature of this code.

The Court analyzed the grounds of the Appellant and the decision was to dismiss the appeal as unfounded. But for this paper is of importance the manner in which the European Court analyzes the Appellant's grounds and argues legally the decision. Thus, in paragraphs 54-56 it is underlined once again that "although the EU has not joined the European Convention on Human Rights (ECHR), ..., which excludes, on legal grounds, a direct application of the provisions of this international convention in the Community legal order .... nevertheless, *the fundamental rights form an integral part of the general principles of law whose observance is ensured by the Court. To this effect, the Court draws upon the constitutional traditions common to the Member States, as well as from the guidelines provided by international instruments concerning the protection of human rights on which Member States have cooperated or to which they joined.* In this regard, ***the ECHR has a special meaning***. The subsequent evolution of the European integration process established this case law on Article 6 (2) TEU. According to this provision, the Union observes fundamental rights, as they are guaranteed by the ECHR signed in Rome on 4 November 1950, as well as how they result from the constitutional traditions common to the Member States, as general principles of Community law ". Therefore, **the ECHR provisions and the case law of the European Court of Human Rights have always been considered by the CJEU, although the EU has not yet joined the ECHR**.

Also, regarding the *principle of good administration*, it is argued in paragraph 89 of the decision that "the *principle of good administration*, which the appellant invokes in the sixth reason, is not a single principle of the administrative law, but *gathers several principles and is, in a way, a generic notion that includes all the principles of administrative law or some of these*. The mentioned principle is sometimes used as a synonym for the principles related to an administrative procedure based on complying with the law. *The principle of good administration* requires especially the national authorities *to remedy the mistakes or omissions, to carry out the procedure impartially and objectively and to make a decision within a reasonable time.* Furthermore, this principle implies includes an *extended obligation of diligence and solicitude devolving on the authorities, the right of defense,* namely the obligation of agents to enable the persons concerned by a decision to express its point of view, *as well as the obligation to justify the decision*".

As can be seen, there are listed essential elements of the *good administration principle* and it is highlighted the fact that national public authorities should act responsibly and fairly, using an impartial and objective procedure, as only in this way will be truly respected people's fundamental rights.

The Court estimates in paragraph 90 that "*the principles coming under the concept of good administration principle vary and are not always easy to determine*. Added to this is the difficulty of evaluating whether it is about principles whose observance falls exclusively on the administrative authorities or about powers that confer individuals a subjective right to require those authorities a determined obligation of doing or not doing. This depends, on the one hand, on the legal nature of the original text and, on the other hand, on the normative principle resulting from the relevant

provisions." On the other hand, "the CJEU case law was the main source for the formulation of Article 41 from the CFREU ... that transformed the *principle of good administration* into a fundamental right", as mentioned in paragraph 91 of the decision.

Thus, in the above mentioned decision, the CJEU briefly analyzes the emergence and development of the *principle of good administration*, its essential elements, impossibility of clearly falling it into a definition, and, not least, turning the *principle of good administration* into a fundamental right through the Charter of Fundamental Rights of the European Union.

For determining the content of the *good administration principle,* it is also particularly important the issue of access to the European documents. Thus, on 17 October, 2013 the CJEU (First Chamber) was required to decide in an appeal concerning the denial of access to data relating to the identity of Member States that have been the authors of the proposals for amending Regulation (EC) No. 1049/2001. Thus, in Case C 280/11 P [14], the Council of the European Union, the Czech Republic, the Kingdom of Spain and the French Republic demanded annulment of the decision of the European Union Court dated March 22, 2011 **(**T-233/09 [15], Access Info Europe/The Council) [16], by which the Court annulled the decision of the EU Council from 26 February 2009 of rejecting the request made by Access Info Europe, for access to certain information contained in a note dated 26 November 2008, addressed to the General Secretariat of the Council, working group concerning information established within the EU Council, *on the proposal for a new Regulation regarding public access to the documents of the European Parliament, Council and Commission*.

By the decision at issue, "the Council gave *partial access to the document requested*. More precisely, this institution has notified Access Info a version of this document which did not allow the identification of Member States authors of such proposals. The Council justified its refusal to disclose the identities of the Member States concerned, on the strength of the exception provided for in Article 4 para. (3) of Regulation No. 1049/2001, for the reason that *the disclosure of these identities would have seriously prejudiced its decision-making without such disclosure being required by a higher public interest*. Thus, taking into account the preliminary nature of the discussions under way at that time, disclosure of the concerned Member States' identities would have diminished the margin of maneuver of delegations during the negotiations characterizing the legislative procedure within the Council and would have thus affected its ability to reach an agreement.

By preliminary application lodged at the Court Registry on 12 June 2009, *Access Info Europe* brought an action for annulment against the decision, which was accepted by contested judgment (T 233/09) [Lea and Cardwell, 2015, 61-80; Abazi and Hillebrandt, 2015, 825-845]. The Court considered first that it is precisely the *principle of democratic legitimacy that requires the authors of the proposals contained in the requested document to respond to the public for their actions, and this the more so when that document belongs to the legislative procedure*. The Court also held that it is the very nature of democratic debate that makes a proposal to amend a draft regulation to be the subject of comments, both positive and negative, from the public and the media. The Court considered that the various proposals for amending or drafting formulated by the four delegations of Member States, which are presented in the requested document, are part of the normal course of the legislative process, which implies that *they can not be considered sensitive* not only from the exclusive perspective of involving a fundamental interest of the Union or its Member States, nor from the perspective of any other criterion. The Court accepted the appeal and annulled the Council decision.

The Court, in turn, estimated that when an institution applies one of the exceptions provided in Article 4 of the Regulation No. 1049/2001, it has an *obligation to weigh up the particular interest that has to be protected by non-disclosing the document concerned* **and**, in particular the *general interest to make the document accessible*, considering the advantages which, as shown in reason (2) of the Regulation no. 1049/2001, result from an increased transparency, namely *a better participation of citizens in the process of decision-making, as well as a higher legitimacy, effectiveness and accountability of administration to the citizen in a democratic system*. The Court

also decided that these considerations are undoubtedly of particular relevance when the Council is acting in its capacity of legislator. Transparency in this regard contributes to strengthening democracy by the fact that enables citizens to observe all the information on which a legislative act was based. Thus, *the possibility of citizens to know the bases of legislative actions is a condition for the effective exercise by the latter of their democratic rights"*.

Consequently, the Court dismissed the appeal brought by the Council, ruling once again in the sense of observing the *fundamental right of access to the Union institutions documents*, since it really ensures citizens' participation in decision-making and increases the administration responsibility towards the decisions made.

3. CONCLUSIONS

These are just a few examples of the decisions of the CJEU, a court which contributed decisively to *shaping the principle of good administration* and eventually to its imposing as a *fundamental right* of individuals across the EU. In order to analyze the concept of ***good administration*** is of special significance the fact that the Treaty of Lisbon, the **Charter of Fundamental Rights of the European Union** acquired primary legal force, having the same juridical value as the Treaties. Thus, the **right to good administration provided in Article 41** has become legally binding for all the EU Member States, not only for the EU institutions. They should identify the practical ways that would lead to the actual achievement of this right, the main elements mentioned in the article representing a starting point for the Member States in drafting internal regulations that will determine a *good administration* at national level, since the Treaty provisions underline that the Union has currently as objectives not only a unitary economic development, but also *strengthening the observance of people's fundamental rights*, thus, implicitly, also *the right to good administration*.

The CFREU is a legally binding instrument on which the European citizen can stand before any European court. It was "a benchmark in the European construction, in the sense that, this time, integration did not aim at economic values, but at values specific to citizens and their rights" [Tănăsescu, 2010, 17].

The Charter is a "real catalog of rights from which all European citizens should benefit before all EU institutions and towards Member States when the latter implement the European legislation" [Tanasescu, 2010, 18]. Although it has on the basis the constitutional traditions common to the Member States and the European Convention on Human Rights [17], still remains a **codification specific to the European Union**, in it being also found rights that are not stipulated in the European Convention on Human Rights, such as: social rights of workers, personal data protection, bioethics and, not least, **the right to good administration** [Tănăsescu, 2010, 18]. Therefore, at European level, the EU member states citizens, but also third-country nationals [18] enjoy the **right to good administration** in its relations with the EU institutions and bodies, according to Article 41 of the **Charter of Fundamental Rights of the European Union.**

[1] Subjective right mentioned for the first time in the Treaty of Nice (signed on 26.02.2001 and entered into force on 01.02.2003) that proclaimed the first draft of the Charter of Fundamental Rights of the European Union, which became binding only on 01.12.2009 based on the Treaty of Lisbon.

[2] Consolidated version published in OJ C 326, dated 10.26.2012.

*[3] The onset of judicial practice of the Court in the **administrative law** area was the Judgment **in Case Algera from July 12, 1957** (Case 7/56, Algera and others / Joint Assembly, July 12, 1957, ECR 1957-1958 p. 39, EU: C: 1957: 7) when it has been found the existence of a double restriction: on the one hand, the lack of a Community rule and, on the other hand, the prohibition on denial of justice. In this case was put forward the issue of rendering void an administrative act that creates subjective rights and it was found that no Community provision indicated under what conditions a Community institution may render void such an administrative act. Therefore, the Court considered that it should be resorted to the rules recognized by the legislation, doctrine and case law of the Member States in order to be given a judgment.*

[4] Available on page http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61970CJ0055, accessed on 17.11.2016, ECLI:EU:C:1971:50.

[5] See the decisions on page http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61979CJ0033 , accessed on 17.11.2016, ECLI:EU:C:1980:139 .
[6] CJEU, Case Ian William Cowan v. Trésor public C. 186/87, ECLI:EU:C:1989:47, available on page http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?isOldUri=true&uri=CELEX:61987CJ0186 , accessed on 17.11.2016.
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[11] Paragraph 100 from the decision, ECLI:EU:C:2010:480.
[12] Case C-33/07, Ministry of Administration and Internal Affaires - Directorate General for Passports of Bucharest versus Gheorghe Jipa, ECLI:EU:C:2008:396.
[13] ECLI:EU:C:2008:498.
[14] ECLI:EU:C:2013:671.
[15] ECLI:EU:T:2011:105.
[16] Acces Info Europe is a governmental organization for human rights, with headquarters in Spain, which campaigns for the promotion and protection of the right of access to information in Europe, as an instrument to defend the rights and freedoms of people and to facilitate the participation of citizens in decision-making by public authorities; see page http://www.access-info.org , accessed on 17.11.2016.
[17] In the doctrine is observed that the ECHR had to frame their case law by reference to the legal order of the European Union and used the Charter to strengthen the interpretation of a law or to justify another orientation of its case law, for the purpose of modernizing the rights provided in the Convention. In other words, ***is seen a relation of influence and mutual enrichment between the two legal systems*** *- Marie-Luce Paris, European Court of Human Rights and European Union law, especially the Charter of Fundamental Rights: a subtle management between systemic adjustments and mutual enrichment, in the Romanian Journal of European law, no. 2/2013, p. 149-178.*
[18] In the doctrine is considered that using the words "any person" and not those of European citizen gives the possibility of invoking these rights not only by the citizens of Member States, but also by the citizens of third countries, which brings the Charter a global dimension and confers coexistence with other international instruments on human rights - see Oana Mihaela Salomia, Autonomy of the Charter of Fundamental Rights of the European Union, Law Magazine no. 2/2013, p. 253; the author considers also that Title V of the Charter includes "modern " and "present-day rights", which derive from the provisions of the EU law, also derived in the CJEU case law, the right to good administration being sometimes considered "the only novelty" brought by the Charter - see also Frédéric Sudre, The European and international law of human rights, Polirom Publishing House, Iaşi, 2006, p. 127.

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