

CAN WE CONSIDER THE RIGHT TO GOOD ADMINISTRATION A
CONSTITUTIONAL RIGHT?

Elisabeta SLABU*

Abstract

The recognition of the right to good administration as a fundamental right through the Romanian Constitution is very important. Although this has been proposed many times in the specialist doctrine, so far, no consensus has been reached as to the form this right should take in Romania's fundamental law. It is also proposed in the doctrine to approve an administrative procedure that creates the necessary framework for good administration to become a primary objective for all public administration authorities. This should be linked in such a way that public administration action is carried out at all times in order to achieve the public interest.

Keywords: constitutional right, the right to a good administration, Administrative Code, Code of Administrative Procedure

1. Brief Introduction - the Correlation between Fundamental Rights and Good Administration

Fundamental human rights and freedoms should be a particularly important area in the concerns of each state and, certainly, in the concerns of the international community. The research of fundamental rights and freedoms is a constant concern of lawyers, who should analyse the manner in which they are included in the legislation of each state and whether it would be necessary to increase their scope in accordance with the level of development of today's society. Thanks to their importance, the fundamental rights of the people are entered in declarations of fundamental rights and laws, which also means the establishment of guarantees for their protection and exercise, both at normative and institutional level.

As a consequence, it can be stated that fundamental rights are "those subjective rights of citizens, essential for their life, freedom and dignity, indispensable for the free development of the human individuality, rights set through the Constitution and guaranteed by the Constitution and laws" (Muraru, Tănăsescu, 2016, p. 219).

* Ph.D., Lecturer, "Dunărea de Jos" University of Galați, Faculty of Law and Administrative Sciences, elisabeta.slabu@ugal.ro

Romania has adopted over time a legislation that has determined positive changes in public administration, leading to a higher responsibility of persons exercising a public office and transparency of its activity. The integration of the national administrative law in the European administrative space implies a *good administration* of public affairs, through the modernization of public institutions and in the continuous evolution of the Romanian society. First of all, a *good administration* is based on a clear, unitary legislation. This legislation must ensure the respect for the fundamental rights of the people and the closeness to the citizen, through the equitableness and transparency of the procedures for adoption and enforcement at national level of European standards and principles.

Good administration also means the development of unitary and clear procedures for decision-making, accessible to both the governed and the governors, procedures that can be easily known and used by citizens and persons carrying out public offices.

Moreover, *good administration* involves ensuring the efficiency and effectiveness of the action of public administration, through the optimal use of national resources (including human resources) and by thinking out public policies that would enable an evolution of the Romanian society as a whole. As a consequence, the compliance with the legal provisions that can lead to a *good administration* implies raising the awareness of all those who carry out their activity in the public administration but also the control of their activity, for the prevention of abuse and corruption, by holding liable those who violate the legal rules.

Last but not least, *good administration* implies the timeliness resolution of conflicts that may arise between the receivers of public administration action and the persons enforcing national and European legislation. As a result, national law must anticipate modern ways of alternatively resolving the possible disputes that may arise between citizens and public authorities, such as domestic appeals, mediation and the Ombudsman.

Therefore, good administration implies “both the respect for the fundamental rights of the governed by the governors, in the rule of law, and the proper functioning of public administration as a system, while observing clear, predictable rules, known both by those working in public administration and by citizens and with the setting of public goals that would correspond to the wishes and needs of the latter” (Slabu, 2018, p. 41-51).

And the *right to good administration* is a fundamental right of the citizens of the European Union, being recognized by the *Charter of Fundamental Rights of the European Union*, in Article 41, titled “*The right to good administration*”. Why could this right not be recognized by our fundamental law as an essential

right for human life, freedom and dignity, indispensable for the free development of the human personality?

2. The Right to Good Administration in the Vision of the European Union and of the Romanian Doctrine

The Member States of the European Union usually share the same principles applicable to public administration and the same common need to uniformly implement European Union law. As a consequence, in the national legal systems there have been important changes in the manner of approaching the administrative procedure, being intended a harmonization of national regulations with the European ones. Each European state has been and is interested in building the most appropriate legal levers and procedural mechanisms "to increase administrative capacity, improve public management and change the mentality of people carrying out their jobs in public administration, regardless of whether they are elected, appointed or won a competition for holding a public office, in the sense of closeness to the citizen" (Slabu, 2017).

The studies of comparative administrative law carried out over time have shown that the models considered useful have been taken over from one national law system to another, contributing to the development of administrative law in various European states. Therefore, it can also be stated that "the evolution of European administrative law is closely linked to the evolution of administrative law in all Member States, being targeted to unify the general trends and to accomplish a good administration at both European and national level" (Slabu, 2017).

For the analysis of the concept of *good administration*, it is highly important that through the Treaty of Lisbon, the Charter of Fundamental Rights of the European Union acquired primary legal force, having the same legal value with that of the treaties. Thus, the right to good administration provided in Article 41 has become legally binding for all Member States of the Union, not just for the Union institutions. It represented "a point of reference in European construction, in the sense that integration targeted, this time, not the economic values but the specific values of citizens and their rights" (Tănăsescu, 2010, p.17).

Therefore, at European level, the citizens of the European Union member states, but also the citizens of the third states benefit from a right to good administration in the relations with the institutions and bodies of the European Union, according to Article 41 of the Charter of Fundamental Rights of the European Union. Its provisions are supplemented by other elements of good administration, found in the content of the Charter, such

as: equality before the law, equality between women and men, non-discrimination, freedom of expression and information.

Thus, the concept of *good administration*, a current and modern concept, which resulted following certain continuous observations and which proved useful to the current needs of society, can be considered a *principle of administrative law*, namely that "guiding idea of the content of all legal rules of administrative law, which influences both the structure and the development of the administrative system" (Alexandru, 2006, pp. 5-7). So, it is proposed to insert also in the Constitution this principle, exactly to build up its strength and importance.

In the recent doctrine there can be found proposals concerning the recognition through the Fundamental Law of the Romanian state of *the right to a good administration* as a fundamental right, the content of this right being able to be inspired by that of Article 41 of the EU Charter of Fundamental Rights. In the opinion of one author, "the *right to good administration* is similar to the right of the citizen to a fair trial and contributes to fortifying a culture of fair treatment in administration", and by its explicit establishment in the Constitution, "Romania could benefit from a domestic catalogue of human rights, European harmonized" (Bălan, 2013, pp. 44-45).

The same author considers that in the Romanian Constitution there must be regulations on the mission and means of public administration but also as concerns the standards that it must fulfil, in order to ensure the protection of the rights of all persons before the public power. As a result, it is proposed to enter within Title II, Chapter II, entitled *Fundamental Rights and Freedoms, of the Romanian Constitution, the fundamental right to good administration*, seen as a counterbalance to the discretionary power of public administration.

Another author advances the proposal that in the fundamental law must be inserted the *right to good administration*, using a synthetic formulation, different from the one forwarded by Article 41 of the CDFUE, as follows: "the right of each person to the benefit from an impartial, equitable and reasonable treatment in relations with the administration". However, he/she proposes that the limits and conditions for exercising this right be laid down by organic law, "due to the importance and complexity of this right, which cannot be exhausted in a single text, by a sentence", being required "an increase in its significance with a reference to an organic law" (Vedinaş, 2013, p. 23).

3. Conclusions and proposals

We agree to these proposals; *the right to good administration* must be provided separately in the Fundamental Law of the Romanian State, in Title II, Fundamental Rights, Freedoms and Duties. But it is also necessary to regulate an administrative procedure that creates the framework for good administration to become the fundamental principle for all activities carried out by the public administration.

However, this also means the adoption of the Code of Administrative Procedure. I believe that through public debate and consultation with all the important public actors in Romanian society, this code should be adopted, and implicitly the principle of good administration would be made legally binding.

We therefore propose that good administration must be recognized as a principle of public administration and that the future administrative procedure code should define it.

Finally, it should be stressed that respecting the right to good administration can contribute to the achievement of public objectives, and that Romanian society can move toward real integration into the European administrative area, as many of Romanian citizens wish.

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