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Reasonable Term. Component of the Right to Good Administration

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Abstract: Establishing a transparent institutional system, immune to corruption and designed to serve the citizen is the foundation of good governance, in which action becomes deficient just by simply complying with the law. The complexity of the environments in which public administration operates and the stimulations that influence it, the limitation of public administration resources, increased competition and especially technological progress are essentials for a manner of working and functioning that ensures results based on efficiency and performance. In order to improve the quality of public action, good training and improvement of civil servants is required in relation to these standards so that they can act in harmony with the requirements of good administration.

Keywords: public administration; European law; European citizen; good administration

1. Introduction

In the case law of the Court of Justice and the Court of First Instance, the concept of good administration appears as the principle of good administration or the right to good administration. The latter is, in the view of the two Community courts, a general concept enclosing a number of administrative principles, both substantive and procedural (Bălan, Varia, Iftene, Troanţă & Văcărelu, 2010, p. 29). Like the principle of sound administration, good administration supposes fair, equitable treatment within a reasonable time, namely the obligation to state reasons for decisions, the obligation of transparency of the Community institutions. Article 41 of the Charter of Fundamental Rights combines in four distinct sections the obligations of the Community institutions and the fundamental rights of citizens who interact with them as I will list: the obligation of impartiality, fair treatment, compliance with the reasonable time limit on the reasonings requests received in the language in which they were made; the right of the person to be heard before any individual action is taken, the right of access to his or her file, the right to address himself or herself in one of the official languages of the Union, and the right to reparation for damage caused by the institutions, Union bodies or agents in the performance of their duties, in accordance with the common principles of law of the Member States.

The obligations and rights provided in art. 41 thus forms the principle of good administration. In relation to Article 6 of the Treaty on European Union, the Union respects the fundamental rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950 in Rome, and the traditional rights common to the Member States, which are general principles of Community law. The right to a good administration is defined in art. 41 of the Charter of

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Fundamental Rights, being established as a new fundamental right, being applied to citizens and recognized "to any person" who comes into contact with the institutions and bodies of the Union.

2. Brief History of Principles on Reasonable Term in the European Background

Since 1960, fundamental rights have been protected by the Court of Justice of the European Union, which could verify whether Member States' internal rules respect fundamental rights. The right to good administration has been developed mainly through the case law of the Court of Justice and the Court of First Instance, based on the fundamental pillar of the Community, namely the existence of a Community subject to the principle of legality (Bălan, Varia, Iftene, Troanţă & Văcărelu, 2010, p. 66). We also recall the particularly important role in the development of art. 41 and its introduction in the Charter of Fundamental Rights played by the institution of the European Ombudsman. Article 41 of the Charter of Fundamental Rights of the European Union is in fact the product of a proposal by the first European Ombudsman, Jacob Soderman, to establish the right to good administration in the Charter at principle, following a proposal made by him on 2 February 2000 Brussels Convention on the Draft Charter.

Following the decision of the European Council during the June 1999 meeting, the European Ombudsman was invited to participate, as an observer, in the work of the Commission responsible for drafting the Charter of Fundamental Rights of the European Union. During the hearing before the Convention, the European Ombudsman emphasized the importance of including a right of citizens to good administration among the classical fundamental rights and, using the Finnish administration as an example, stated that *'the true test of good government is the ability to produce good administration*" (Soderman, 2005, p. 91). He also mentioned the right of citizens to have their problems dealt with properly, correctly and promptly by an open, responsible and helpful administration, noting that these rights are nothing in the absence of effective remedies, both legal and non-legal. During the next Convention the need to encourage and codify a right to good administration was emphasized and thus, following the proposal of Jacob Soderman, the right to good administration was included in the Charter of Fundamental Rights of the European Union[1].

3. European Juridical Framework

In the introductory statutes, the concept of a reasonable term was preserved in art. 6 paragraph 1 of the European Convention on Human Rights, according to which "*Everyone has the right to a fair and public hearing within a reasonable time, by an independent and impartial board established by law, which shall decide whether on the violation of his civil rights and obligations, or on the merits of any accusation in criminal matters directed against him* "[2]. In the literature, it has been emphasized that the right to a fair trial is, on the one hand, one of the components of the principle of ensuring the rule of law in a democratic society and, on the other hand, an essential component of another fundamental principle which it follows from the arrangements of the Convention, and also the assertion of a European public order of human rights (Bălan, Iftene, Troanţă, Varia, & Văcărelu, 2011, p. 53).

Analyzing the arrangements of art. 6, para. 1, we find that the reasonable term was enshrined by the Convention as one of the explicit guarantees of the conduct of a fair trial, respectively of the observance

[1] Jacob Soderman, speech, Brussels, February 2000.

[2] The Convention, signed in Rome on November 4, 1950, entered into force on September 3, 1953, being signed by Romania on October 7, 1993 and ratified by Law no. 30/1994, published in the Official Gazette of Romania, part I, no. 135 of 31 May 1994.

of the principle of speed of judicial proceedings. Thus, by establishing the condition of reasonable term as a guarantee of compliance with the principle of speed of judicial proceedings, the Convention ruled that justice must be administered without delay that would compromise efficiency and credibility, although the state is and must be held accountable for all its services, not only for the activity of the judicial bodies taken separately. Moreover, with regard to the concept of a reasonable term, in the sense of guaranteeing a fair trial, the European Court of Human Rights has consistently held that the assessment of the reasonableness of the duration of a judicial procedure before national courts must be individualized, analyzed on a case-by-case basis, in relation to its circumstances and the criteria set out in its case-law as follows: the complexity of the case in fact and in law, the conduct of the parties to the proceedings, the conduct of the competent authorities and the importance of the dispute. Next, I will analyze the notion of a reasonable term from the perspective of the right to good administration, especially when we refer to the length of administrative procedures that take place at a stage prior to the referral to the courts.

In consonance with the literature as well as with the case law within the Administrative and Fiscal Litigation Section of the High Court of Cassation and Justice, the reasonable term enjoys in different stages a different approach respectively as a component element of the right to good administration, right fundamental role of the European legal order. The right to good administration is provided by a relatively recent formulation, both in the broad framework of European political and legal instruments and in a narrow, doctrinal framework, but has recently been a constant concern at the level of higher education institutions in our country. Thus, in the run-up to the adoption of the European Charter of Fundamental Rights at the Tampere European Council in 1999, when negotiating issues related to the drafting of this legal instrument, the European Ombudsman proposed that the Charter explicitly mention the right of individuals to the quality of the services provided by the administration, stating that the next century will be the "century of good administration" (Bălan, Iftene, Troanţă, Varia & Văcărelu, 2011, p. 177). Considering the role and importance of the political and legal instruments of the European institutions, the right to good administration is manifested in two different areas, the first being in relation to the level of the institutions and bodies carrying out the respective exercise of rights, and the second refers to the legitimate interests of individuals or legal entities. Therefore, at an European level, in aid of the person, as a citizen or resident of Europe, there is a right to good administration in its relations with the institutions and bodies of the European Union, as regulated in the content of article 41 of the European Charter of Fundamental Rights.

The right to a good administration is stipulated for the first time, in this form, in the content of art. 41 of the European Charter of Fundamental Rights, entitled "The right to good administration". According to art. 41.1. of the Charter, everyone has the right to have his or her problems resolved impartially, fairly and within a reasonable time by the institutions and bodies of the Union. This right includes, in particular, according to art. 41.2 the following: the right of every person to be heard before taking an individual measure which could unduly affect him or her, the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and professional and business secrecy, namely the obligation for the administration to motivate its decisions[1].

Therefore, following the analysis of the previous statutes, the right to good administration was preserved with the express enumeration of the reasonable term as a component element of this right, which has as a correlative obligation on the part of the authorities, their duty to act promptly and efficiently within a reasonable period of time. Thus, the principle suitable to the time required to carry out certain procedures

[1] Charter of Fundamental Rights of the European Union (2012 / c 326/02).

pressumes, as a general rule, that decisions are taken by Community bodies within a reasonable time. The case law of the Court has established that it is impossible to set a certain maximum period of time and that the analysis must be carried out on the basis of the specifics of each case.

Compatible in this reference is the Court's decision of 2001 in the case of Limburgse Vinyl Maatschappij v Commission (C 238/99) which establishes new data on the principle of a reasonable time[1]. The Court considered in this case that the exceptional length of time between the commencement of the administrative procedure and the obtaining of the judgment did not, however, affect the principle that decisions must be taken within a reasonable time. Also in Article 230 the Court notes the need to audit individually the issues pertaining to each procedural stage, but also in a comprehensive manner, regarding as a whole both the administrative procedures and the associated judicial proceedings. The difficulty of the case in question and the new legal issues it raised drove the Court to consider that the purpose pursued by the need to ensure a reasonable time should not skeptically affect the efforts made by the institutions to establish the issues in question correctly it is necessary to submit its observations and to provide evidence and, last but not least, to issue a decision only after it has been established that there have been injuries or penalties provided for (Bălan, Varia, Iftene, Troanţă & Văcărelu, 2010, p. 37).

As a relevant conclusion also for other cases brought before the Court of Justice or the Court of First Instance, we can acknowledge that the principle of reasonable term is a generally accepted principle that starts from the assertion of efficient and accelerated resolution of cases, but conditioned by the specificity of each case part. In that regard, it can be understood how a case settled within a total procedural period of 46 months and challenged before the Court of First Instance was dismissed. The Court of First Instance noted in its decision the importance of assessing the length of an administrative procedure in the light of the particular circumstances specific to each case and in particular its context, the different procedural stages followed, the conduct of each party during the proceedings, the complexity and importance of the case[2].

4. Conclusion

The concept of good administration has been developed on the basis of the cases of maladministration described by the European Ombudsman. With these in mind, good governance at European level involves a multitude of doctrinal ideas and definitions, but it is necessary for the principle of good governance to be determined in administrative law and through the procedures for its application. Therefore, in the field of administrative law we can distinguish between a substantive and a procedural right, although the boundaries between the two categories of rules are not always precisely delimited. Among the many roles played by administrative procedures, we consider that the role of assisting administrative institutions in carrying out the tasks within their competence as well as ensuring that persons affected by the decisions and actions of administrative institutions are treated correctly, efficiently and promptly is fundamental.

Good administration would not be possible without democracy and public participation, and the first sign of democratization should be the observance of the law ad literam, regardless of professional status, then the depoliticization of the administration and the removal of administrative centralism. Democratic society is based on respect for the principles and values of pluralism, legality, respect for human dignity

[1] Court of Justice, C 238/99 Limburgse Vinyl Maatschppij v Commission, 2001, Art.230.
[2] Court of Justice, C 238/99 Limburgse Vinyl Maatschppij v Commission, 2001.

and cultural diversity. In conclusion, the right to good administration provides for the possibility for the person to be treated impartially, fairly and within a reasonable time in resolving his problems, by the Community institutions and bodies, this being possible through the impeccable administrative conduct of civil servants and compliance with administrative rules and principles at both national and European level.

References.

Alexandru, Ioan (2005). *European Administrative Law*. Bucharest: Lumina Lex Publishing House.

Alexandru, Ioan; Cărăușan, Mihaela; Gorjan, Ilie; Ivanoff, Ivan Vasile; Manda, Cezar Corneliu; Nicu, Alina Livia; Rădulescu, Crina & Săraru, Cătălin Silviu (2007). *Administrative Law in the European Union. Comparative administrative law*. Bucharest: Ed. Lumina Lex.

Bălan, E.; Varia, G.; Iftene, C.; Troanţă D. & Văcărelu, M. (2010). *The right to a good administration and its impact on public administration procedures.* Bucharest: Ed.Comunicare.ro.

Bălan, Emil; Iftene, Cristi; Troanță, Dragoș; Varia, Gabriela & Văcărelu, Marius (2011). *Good administration: from vision to action*. Bucharest: Ed.Comunicare.ro.

Charter of Fundamental Rights of the European Union (2012 / c 326/02).

Court of Justice, C 238/99 Limburgse Vinyl Maatschppij v Commission, 2001.

Luxembourg. Recommendation CM / Rec (2007) 7 of the Committee of Ministers to member states on good administration.

Soderman Jacob (2005). *The Early Years of the European Ombudsman, in - The European Ombudsman - Origins, Establishment, Evolution.* Luxemburg: Office for Official Publications of the European Communities.

Soderman, Jacob speech, Brussels, February 2000.

The Convention, signed in Rome on November 4, 1950, entered into force on September 3, 1953, being signed by Romania on October 7, 1993 and ratified by Law no. 30/1994, published in the Official Gazette of Romania, part I, no. 135 of 31 May 1994.