

The Right to Good Administration

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Abstract

The article describes the importance and development of the modern concept of good governance and good administration. Right to good governance is one of the fundamental human rights. Good governance in its European dimension has been set as a mandatory requirement for public administration. In the article the role of the ombudsman has been presented as well, which monitors the observation of the right to good governance and good administration. Control in the sphere of government is one of the important regulators of administrative activities, called to ensure legality, efficiency and relevance of public interest objectives.

Keywords: management, public administration, civil control, human rights, good administration

Introduction

Right to good governance and good administration is a derivative of the current socio-political system. Right to good governance and good administration is an expression of the principle of national sovereignty and is associated with the formation of a representative power and the right of citizens to exercise control over the power and the administration.

This right expresses the principle of unity between politics, economics and civil society. It has been created as opposed to administrative discretion. The principle of the right to good administration has been related not only to good administration, but also to the fact that it should be lawful.

For the compliance with this law, it is necessary to ensure the functioning of the mechanisms of local and state authorities in order to match public expectations and to meet the established requirements, including those on international level. Management of "good administration" is associated with unconditional respect for human rights, rule of law, political pluralism, transparency and responsibility in the work of public authorities.

At the heart of the European concept of good governance, three main values have been enshrined - democracy, human rights and rule of law.

The concept of good governance and good administration is not new or unknown. It has its own long history and development. The concept of good governance has existed since the dawn of modern civilization. It is directly linked with the concept of statehood and governance.

Even Plato and Aristotle, developing the ideas of the ideal state, had specified the characteristics of good governance that had distinguished it from mismanagement. This idea was developed during the Enlightenment in the writings of Locke, Montesquieu, and the ideas of human rights in the English Magna Charta¹. It ensures and protects the rights and interests of citizens from the actions of royal power.

Nowadays, the concept of good governance has been developed and improved by a number of key documents and acts of international and European organizations - the UN, the Council of Europe, the European Court of Justice in Luxembourg, the European Union and international financial institutions.

¹ Magna Charta, June 15, 1215

The term "good governance and good administration" began to be used in the first policy for sustainable development in 1970s. Its use has been associated with the idea that public institutions must make their decisions, respecting the rule of law and preventing cases of abuse and corruption in the management of public resources, ensuring respect for human rights in the countries. On this basis, the International Monetary Fund and World Bank unite aid and loans they make with the requirements of good management of funds by the members - beneficiaries.

The principle of good governance and good administration has been a key leader in the administrative law of the European Union, which is expressed in compliance with certain rules of conducting the institutions in their relations with the citizens.

Right to good administration is part of the field of civil rights and as such is subject to the obligation to respect for human rights by public institutions. This right has been enshrined in a number of conventions and resolutions of UN² bodies.

The main characteristics of good governance defined in these are - effective mechanisms for citizen participation, transparent and corruption-free political system, accountability of public authorities, modern administrative services, inclusion of vulnerable groups, introduction of e-governance, etc.

The Council of Europe does not remain indifferent to the idea of the development and promotion of good governance and good administration either. The ever-increasing role of the public administration and its impact on civil and political rights do not remain unnoticed by the Council of Europe. It aims to identify measures that aim to improve the efficiency of the administration towards the citizens and ensure fairness in the relationship between the citizens and the administrative authorities.

The first major step for the establishment of good administration is the adoption in 1977 of Resolution 77 (31) for the protection of human rights in connection with the acts of the administration of the Committee of Ministers of the Council of Europe. In the resolution "good administration" has been defined as a mandatory requirement for the states. Subsequently, the Council of Europe has accepted a number of recommendations that formulate the principles of good administration³.

The right to good governance and good administration is regulated by the Charter of Fundamental Rights of the European Union⁴. This is crucial, since good governance is not only the duty of the government and administration, but is also included in the scope of fundamental human rights protected by the EU.

The right of every person to impartial and fair administrative services within a reasonable time has been established in the Charter of fundamental rights of the European Union, and has been imposed by the Court of Human Rights and the Court of First Instance of the EU⁵. The right to good governance has been elevated to the rank of a fundamental right of EU citizens. The inclusion of this right in the founding document shows its extreme importance, which will grow in the future. The European Commission sets out the principles of good governance of the Union by the White Paper⁶. It sets out five principles - transparency, citizen participation, accountability, effectiveness, coherence.

Even before the right to good administration is enshrined in the Charter, in 2001 the European Parliament adopted a resolution approving the European code of good administrative behaviour. It is mandatory for the institutions and bodies of the European Union, the administration and staff in their dealings with the citizens⁷.

² Convention against Corruption on October 31, 2003; Resolution 2005/68 on the role of good governance for the promotion and protection of human rights (Human Rights Commission of the United Nations); Code of Conduct for police officers, adopted by the UN General Assembly on December 17, 1979 (Resolution 34/169); Convention against Transnational Organized Criminality on December 15, 2000;

³ Recommendation No. R (80) 2 on the exercise of discretion by the administrative authorities; Recommendation No R (87) 16 on administrative procedures affecting a wide range of people; Recommendation No R (2000) 10 on codes of conduct for public officials; Recommendation (97) 7 of April 1, 1997 on local public services and the rights of their users; Recommendation (97) 24 of 6 November 1997 on the twenty guiding principles for the fight against corruption; Recommendation 1615 (2003) on the institution of the Ombudsman

⁴ Charter of Fundamental Rights of the European Union proclaimed in Strasbourg on 12 December 2007 (2010 / C 83/02)

⁵ Art. 41 of the Charter of Fundamental Rights of the European Union

⁶ European Governance - A White Paper

⁷ The European Code of Good Administrative Behavior, The European Ombudsman, 2001

The purpose of this code is to explain in details what "good administration" means. In this code, "bad management" is defined, by what a public body "does not act in accordance with a rule or principle which is crucial for it." Usually, it refers to - malpractice, excessive time delay, discrimination, non-execution of obligations, failure or refusal to provide information, procedural errors, lack of interest, lack of transparency, etc.

Fundamental norms and rules of conduct of the administration have been reflected in the Code, the core of which are ethical and universal values of respect and personal dignity of every requirement of law in action, non-discrimination, absence of abuse of power, impartiality and independence, objectivity, fairness, responsibility for motivating a decision, etc.

The main criteria of good governance and good administration are outlined in a number of documents and acts of the Council of Europe, European Union, United Nations and international financial institutions. These criteria are essential prerequisites for the formation of a competent and good administration, working for the benefit of citizens and protecting the public interest. They are related to the adoption and implementation of the rule of law and human rights, accountability of state and municipal authorities to guarantee the participation of citizens in decision-making, transparency and efficiency in administration at all levels, equal opportunities of citizens and others. These criteria should be adapted to national public and institutional environment and needs. But they are the basis for the formation of a competent and humane administration, working for the benefit of citizens and protecting the public interest.

Currently, there is no uniform classification of the principles of good governance. Modern European administration has established common democratic principles in the administration in the Member States of the EU. They are formulated as basic, guiding principles in the public administration system. In Bulgaria the basic principles of public administration have been regulated on constitutional and legal level.

They reflect the basic position that the administration operates in the public interest and in accordance with the Constitution and other laws. Pursuant to the Administration Law⁸, the Administration operates in compliance with the following principles: legality; openness and accessibility; responsibility and accountability; efficiency; subordination and coordination; predictability; objectivity and impartiality. Moreover, on national level several documents have been adopted, which contain eight principles, on which the activity of Bulgarian administration must be subordinated: legitimacy, accountability, reliability and predictability, openness and transparency, accountability, effectiveness, efficiency (productivity), cooperation (partnership) and coherence⁹.

Dissatisfaction of citizens and criticism most often have been referred to the way institutions function and the degree to which they respect the rights of citizens, combined with the public interest. This requires understanding of the concept of good governance and good administration and removal of the right to good administration as a priority especially in our country.

Ensuring the legality and regularity of the activities of the state administration is of extreme importance. It is of state interest that the activities of the administration be in accordance with the law. Control in the sphere of government is one of the important regulators of administrative activities, which has to ensure legality, efficiency and relevance of important public purposes. Through funds, provided by law for control over the administration, the individual citizen has been protected by the dominant authority of the state administration.

The right of citizens of the control of the state administration has been executed by the Constitution and several separate laws. Civil control over the public administration is an important factor for the establishment and development of the Bulgarian society as European. Public control is a manifestation of citizens' participation in governance and the increased role of the sociality in the evaluation of the functioning of public administration. Exercising of control by citizens and their organizations over the work of the state apparatus is an underlined expression of real democracy. Civil control has been one of the instruments of the state which ensures a well-functioning administration.

⁸ Art. 2, Para. 1 Administration Act Prom. SN. No 130 of 5 November 1998. amend. and supplemented. SN. No. 27 of 25 March 2014.

⁹ "Strategy for Modernisation of the State Administration - from Accession to Integration", adopted by the Council of Ministers on 09.07.2002; "Strategy for Modernisation of the State Administration - from Joining to Integrating 2003-2006", adopted by the Council of Ministers on 24.09.2003; "White Paper on the achievements and challenges facing the Bulgarian public administration in the EU 2005."

The institution that monitors the compliance with the right to good governance and good administration is the ombudsman. In 2006, the ombudsman of the Republic of Bulgaria has determined as a priority and base of its activities the principles of good governance and the related with them right of every citizen of good governance and good administration. This derives from the constitutional function of the ombudsman - to protect the rights of citizens and to exercise civil control over the administration¹⁰.

He uses the concept of good governance, defining it as a "competent and humane administration that works in the service of citizens and protects the public interest. In this case the administration has been guided by the following guidelines: rule of law and human rights, transparency and efficiency in administration at all levels, accountability of the state and municipal authorities, guarantees for citizen participation in decision-making, equal opportunities and inclusion, policy agreement and the balance of interests in society¹¹.

The role of the ombudsman can be defined as: advocacy for the rights and freedom of citizens, when violated, or even just threatened by public administration. This role can be summarized thus: implementation of civil control over the public administration and advocacy for overcoming the conflicts between citizens and administration.

Ombudsman liaises between civil society and the state, ensures the coordination of public and private interests, and contributes to greater transparency of the administrative work for the society. He ensures the administration's responsibility for its actions to the public. Important is the role of the ombudsman to inform members of civil society for the mistakes and abuses of the administration. Ombudsman is not only a mechanism for settling disputes between citizens and the administration, but also cooperation for curbing of the corruption.

That is why by means of revealing acts of bad administration and recommendations to overcome them, the ombudsman shall help to reduce corruption in the administration.

Ombudsman has been increasingly recognized in our country as an effective mechanism for the protection of the rights and interests of citizens, which is confirmed by the number of complaints, submitted to the ombudsman, increased progressively. Citizens increasingly look for assistance ombudsman and seek protection of their rights, which is evident from the graphics. On one hand, this shows that citizens' confidence in the ombudsman has been firmly established and grown, which is a sign that the institution meets the expectations of citizens to receive assistance in resolving their problems and protecting their rights in deciding individual cases.

On the other hand, however, the increase in complaints is a clear indication of increased intolerance of people to acts of bad administration, as well as awareness of the need to exploit the opportunities for the protection of their rights.

Taking everything into consideration, we can say that good governance principles have been manifested as a prerequisite on one hand for development and prosperity of any democratic state, and on the other hand, the citizens can feel safe, secure and satisfied. The priority of the state should be the promotion of the right to good governance and good administration as social norms and rules of conduct of the administration.

References

- Administration Law Act, Prom. SN. No 130 of 5 November 1998. amended and supplemented. SN. No. 27 of 25 March 2014.
- Annual Report of the Ombudsman of the Republic of Bulgaria for 2006
- Charter of Fundamental Rights of the European Union proclaimed in Strasbourg on 12 December 2007 (2010 / C 83/02)
- Magna Charta, June 15, 1215
- New quality of life in municipalities. Good governance recognizes the rights of the people recommended by the national ombudsman to local authorities, Sofia, 2009
- The Charter of Fundamental Rights of the European Union, proclaimed in Strasbourg on 12 December 2007 (2010 / C 83/02)
- The European Code of Good Administrative Behavior, The European Ombudsman, 2001

¹⁰ New quality of life in municipalities, good governance recognizes the rights of persons recommended by the national ombudsman to local authorities, Sofia • 2009

¹¹ <http://www.ombudsman.bg/reports/>, Annual Report of the Ombudsman of the Republic of Bulgaria for 2006