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The Principle of Good Administration in the Action of EU Institutions

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Acknowledgments

To my beloved child.

In this academic journey of the last 6 months I had the opportunity to delve into the field of European Union law and, in particular, the law of EU fundamental rights. It was a real challenge in terms of knowledge but most importantly in terms of learning how to cope with demanding circumstances. Remerciements to my supervisor Professor Revekka–Emmanouela Papadopoulou with whom I had the honor and great pleasure to work in a very collaborative spirit. I thank her from my heart for her precious help. To my esteemed Professors Metaxia Kouskouna and Emmanouil Perakis for the effort they put into organizing this extremely successful and useful LL.M. program and the honor they do me to read my dissertation as members of the three-member Committee.

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Abstract

This Master's thesis is the final output of the postgraduate program that I had the opportunity to attend on the subject of legal studies. Its theme concerns good administration and the conditions that allow its implementation. Good administration is a much-contested term and takes various forms as a principle and a right. Those two dimensions were explored meticulously both for the European legal order and also concerning the Greek legal context. The task wasn't simple. However, the European courts decisions allowed me to grasp better the concept at hand, and to be able to reach some useful conclusions. It became clear to me that the term good administration is not limited to a "black" (principle) and "white" (right) comparison, but it is much more. In a nutshell, it is a right that protects individuals from maladministration and discretion, while at the same time acting as a prerequisite of good governance. More broadly, good administration is a right that respects human dignity and should be taken into account in every possible way and especially for the issuing of legal decisions.

Περίληψη

Αυτή η μεταπτυχιακή εργασία είναι το τελικό «προϊόν» του μεταπτυχιακού προγράμματος που είχα την ευκαιρία να παρακολουθήσω πάνω στις νομικές επιστήμες. Το θέμα της εργασίας αφορά στη χρηστή διοίκηση και τις προϋποθέσεις που επιτρέπουν την εφαρμογή της. Η χρηστή διοίκηση είναι ένας πολύ αμφισβητούμενος όρος και λαμβάνει διάφορες μορφές ως αρχή και δικαίωμα. Αυτές οι δύο διαστάσεις διερευνήθηκαν με σχολαστικό τρόπο τόσο στο πλαίσιο της ευρωπαϊκής έννομης τάξης, όσο και σε σχέση με το ελληνικό νομικό πλαίσιο. Το εγχείρημα δεν ήταν απλό. Ωστόσο, πολύ σημαντικό ρόλο έπαιξαν οι αποφάσεις των ευρωπαϊκών δικαστηρίων που μου έδωσαν την ευκαιρία να κατανοήσω καλύτερα την ιδέα και να καταλήξω σε χρήσιμα συμπεράσματα. Μου έγινε ξεκάθαρο ότι ο όρος της χρηστής διοίκησης δεν περιορίζεται σε μια ξερή σύγκριση μεταξύ «μαύρου» (αρχής) και «άσπρου» χρώματος (δικαιώματα), αλλά αντιπροσωπεύει κάτι πολύ ανώτερο. Με λίγα λόγια, είναι ένα δικαίωμα που προστατεύει τα άτομα από την κακοδιοίκηση και την άσκηση της διακριτικής ευχέρειας, ενώ ταυτόχρονα λειτουργεί ως προϋπόθεση χρηστής διακυβέρνησης. Ευρύτερα, η χρηστή διοίκηση είναι ένα δικαίωμα που σέβεται την ανθρώπινη αξιοπρέπεια και πρέπει να λαμβάνεται υπόψη με κάθε δυνατό τρόπο και ιδιαίτερα στην έκδοση των νομικών αποφάσεων.

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Introduction

Since the Renaissance, there has been a close intersection among political theory, constitutional thought and the development of legal theory. In the practice of government, the law started to have a dominant role and legal knowledge was perceived as a necessary prerequisite for the everyday conduct of civil servants' duties. Many years later, John Locke who is considered as the founder of liberalism was the one who stressed that all laws require the 'consent of the society', and that 'Where-ever Law ends, Tyranny begins' (Locke, 1698/1988: 356, 400). Philosophers for a while were searching for the ultimate good, which in our case takes the form of good administration. However, a turning point was the work of Machiavelli under the title "*The Prince*", where he argued that there is more than one morality in place: one for the people and one for the politician who are in power. However, when Montesquieu, wrote "*L'esprit des Lois*" (The Spirit of the Law), he was the first to discuss 'constitutional principles' and the separation of powers. Ever since, the world progressed and the legal concepts evolved in a separate science.

Nowadays, advanced societies operate in complexity and need to address difficult problems that affect their citizens' lives. New problems arise all the time such as the devastating effects of environmental pollution, technological innovation, demographic change, and so forth. In doing so, it is required a strong state, while the role of judicial control is rather vital for the so-called checks and balances of the whole system. What makes our epoch more challenging is that the public administrations all over the globe need to do "more with less". As a result, numerous countries turned to the application of the so-called "3 E's" for the modernization of their public sector: economy, efficiency, and effectiveness. The 3E's are based on the New Public Management (NPM) model. But the question remains: "Are three E's enough" (Goddard, 1989) today?

As I understand it, the 3E's which are firmly tight with neoliberal ideas & practices (NPM) fail to indicate other crucial "dimensions" or "aspects" of the public administration machinery, such as the standing position of the legal and administrative concept of "good administration". The recent pandemic which was caused by the Covid-19 virus, was an excellent example in this respect because brought into light that what is needed is not only to keep an eye on decreasing the public authorities' budgets (economy), such as at the hospitals but also to offer qualitative

services to citizens and to protect a number of fundamental rights, such as the right to access public health. When a public institution offers good and respectful services, then the citizens have the opportunity to experience some of the 'fruits' that good administration can offer. That being said, it comes as no surprise that the Council of Europe's Recommendation (2007)7 considers good administration as a key aspect of good governance[1].

The concept of good administration is a tool in the legal armory for correcting administrative behavior and setting distinct boundaries to administrative action, since every citizen has the right to bring his/her case in front of the judicial power and ask for an amendment or cancellation of a wrongful administrative decision. As Nehl (1999, p.13) stated: "*The notion "good administration" in the broad sense is nothing but an aid to describing the corpus of the continuously evolving – legally enforceable and unenforceable – procedural and substantive requirements with which a modern administration has to comply*". This unfortunately, is not the case, because some administrations seem to overlook or even worse to ignore the implementation of judicial decisions. In this light, the rights of citizens are under threat because cannot be fulfilled.

This Master thesis aims to conduct an analysis of the legal concept of good administration and to present a reflection on the connections between law and administration. For achieving this aim, it has been formulated the next research question: ***what is the real content of good administration in the European Union (EU) legal framework?*** Also a very brief analysis will be conducted for Greece, since the country is making part of the EU family. The task is not an easy one, but deserves our attention because it hasn't been investigated in depth. Furthermore, what makes the exploration of the term good administration more interesting is that it isn't limited to the national boundaries of the sovereign states and their national legislations, if we accept the Europeanization approach in law that is going to be explained below.

The central logic of the whole thesis circles around the dichotomy between the principle of good administration and good administration as a citizen's right. Generally speaking, dichotomies exist for a long time in the administrative law where there is an ongoing discussion about the administration by and protection against the government (Addink, 2019). Yet, the dichotomy of good administration either as a principle or as a right is to some extent pretentious because principles and human rights embody norms of different equivalence in terms of legal force. General principles can be written or unwritten which means that are the implied and unstated assumptions of a given society. The implementation of a principle can also lead to the

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

protection of a right. Just to give an example, in Australia the common law principle of legality is used primarily to protect fundamental rights and freedoms and obtains almost a constitutional character (Neo, 2017, p. 669).

After the Lisbon Treaty, the European institutions are bound to respect EU law in their relations with the European citizens. Good administration has its origin in this duty. Before the ratification of the Lisbon Treaty, each institution has its own approach regarding good administration. Harmonization was therefore a blissful result. For issues of good administration, a very influential institution is the European Ombudsman who receives inquiries that mainly concern: openness and public access to documents, the Commission as 'Guardian of the Treaties', institutional and policy matters, the award of tenders and grants, the execution of contracts, administration and the Staff Regulations, competitions and selection procedures. Around one-third of the inquiries, the Ombudsman carried out every year emphasize on lack or refusal of information[2]. Thus, the concept of good administration is more relevant than ever before, while its content gains qualitative characteristics depending on the level of analysis (national or supranational). Ideally, the two levels (nation-state and EU) should 'walk hand in hand' based on an interactive and constructive dialogue which will tend to the emergence of common standards of good administration.

Nonetheless, one thing is for certain: only with the limitation of bad administration and discretion, citizens can gain confidence/trust in the administrative institutions, and at the same time, public administration will be able to offer high-quality services which will respect the citizens' needs. In other words, trust represents the very essence of our democratic systems. Following this line of argument, it is worrisome the findings of a recent survey (Eurofound, 2022) that discovered that trust in institutions continues to fall significantly in EU, despite declining unemployment and phasing out of pandemic restrictions. In that way, Europe enters into a new era of uncertainty and consequently the same applies for its institutions. So it isn't an exaggeration to argue that trust can be regained, among other things, with the exercise of good administration.

[2]European Ombudsman. (2011) The European Ombudsman's guide to complaints, https://www.ombudsman.europa.eu/el/publication/en/11469

A final comment to be made is that good administration is also going to occupy our concerns in the new technological era. In fact, public administration constitutes a high-risk area in the context of Artificial Intelligence (AI) systems. Without going to any further elaboration, the AI systems reach to specific results, which eventually have an impact on the lives of individuals and their rights. As said by Wróbel (2022, p. 210):

> it may become difficult to assess and prove whether someone has been unfairly disadvantaged by the use of AI systems, for example in an application for a public benefit scheme. Also, poor training and design of AI systems can result in significant errors that may undermine fundamental rights. The use of AI systems may leave affected people with significant difficulties to correct erroneous decisions.

The fundamental rights such as good administration cannot be protected by the AI systems, if the necessary legal framework is not in place with the purpose of keeping a track of the technological changes. That being said, the discussion regarding the AI systems is not going to be analyzed in this thesis, since its objective is completely different. It is good to be aware that good administration is not in the bullet proof zone, but is a term that needs to be protected all the time and new legal tools should be designed for that purpose. To put it differently, the content of good administration is affected by the society that thrives in. In more advanced societies, the concept of good administration takes more complex aspects as a concept, in comparison to less developed societies where good administration seems as superfluous luxury.

The organization of the thesis at hand is summarized as follows: Part I refers to good administration as a principle, while Part II refers to good administration as a right. The final section of this thesis is dedicated to the conclusions.

Part I

Good Administration as a Principle

Chapter 1: The Principle of Good Administration in the EU and Greek Legal Order

1.1The difference between "Good Administration" & "Good Governance"

At this point, it is necessary to make an important distinction between the concept of "good administration" and "good governance" because sometimes are mistakenly confused. The term good governance draws its origin from the produced documents of the World Bank in the early 1990s and the goal of those documents was to run aid programs to developing countries for assisting in their economic and social recovery. But why the good governance concept was so significant in the first place? Because "(t)he implementation of the good governance concept contributes to building trust in the society for actions taken by public administration which seeks to optimize its activities" (Świstak, 2016, p. 45). In other words, good governance results in more transparency in the actions taken by the public administration.

According to some scholars, there is a link between EU public policies and the aid programs of the World Band. As it has been supported by Świstak (2016) pursuing EU public policies has analogs with the aid programs of the World Bank, given that both attempt to implement considerable changes in a specific policy area. Despite if someone agrees with this opinion or not, what needs to be taken into account is that good governance is something wider in comparison to good administration. Good administration is one of the elements the build up the concept of good governance, while at the same time the good administration concept entails a strong legal dimension, which is lacking in the good governance term. Strangely enough, both terms share in common the difficulty to be defined (Börzel, Pamuk & Stahn, 2008).

1.2 The Two European Administration Traditions for Good Administration

Before moving on to the definition of good administration, there will be a brief analysis of the traditions that exist in the European continent for good administration. Those traditions haven't been canceled by the enforcement of the **EU Charter of Fundamental Rights** (hereinafter "the Charter") but were enriched substantially.

In the *Anglo-Saxon tradition,* the basic characteristics of a good public administration consist of efficiency and transparency of its action, intending to provide effective services to the citizens. For this purpose, codes of "good administration" have been adopted for civil servants. Those codes establish certain obligations for civil servants in the exercise of their duties (Karageorgou 2007), the violation of which sometimes entails disciplinary or even criminal charges, but they do not provide rights to citizens for checking the legitimacy of the administrative actions.

In the *Scandinavian administrative* tradition, good administration requires both the efficiency and transparency of administrative action, which is achieved by ensuring the right to broad access to documents (Karageorgou, 2007). The Scandinavian therefore administrative tradition adopts the concept of "good administrative practice", which includes the officials' rules of ethical behavior, mainly the principle of legality, and by extension all the administrative rules that are related to the administrative procedure. The idea of the Scandinavian administrative culture is to be as open as possible to the public since the level of trust in those countries is very high towards the public authorities.

If someone compares the two traditions, he/she understands easily that the Scandinavian administrative tradition is much more open and transparent than the Anglo-Saxon tradition. The administration of the Scandinavian countries interacts with active citizens who at any moment can check the administrative decisions. The public administration has as its duty to help citizens to exercise their democratic rights, not to block them. Briefly, citizens' needs come always first.

1.3 Good Administration as a Principle in the EU Legal Framework

In the European Union, good administration is not hanging in the air but is directly associated with the duties that the European institutions need to carry out in their relations with the European citizens. Before the ratification of the Lisbon Treaty[3], good administration has been handled by each European institution differently and as we saw the same occurred at the national states where different administrative traditions were in place. The situation shifted radically when the Treaty of Lisbon entered into force in 2009 (along with the Charter) and many references were included in primary EU law about the European administration. From this point, good administration evolved from a principle to a right. But what was happening before the legislation of article 41 of the Charter? There were different sources to use for the same thing:

1) *Treaty*

Certain rights before article 41 of the Charter were previously found scattered in the Treaty: 1) the obligation to give reasons (Article 253 EC), 2) the right to reparation of damages caused by the Community (Article 288 EC), and 3) the right to write to the institutions in one of the Treaty languages and receive an answer in the same language (Article 21(3) EC). There is also a Treaty provision on a right to a fair hearing but has been subordinated only to the field of state aids (Article 88 (2) EC). So in the Treaty, there wasn't a single article that was dedicated completely to the good administration as such.

2) *Case-law of the EU Courts (then Community Courts)*

The EU Courts had the more influential impact on the formulation of the good administration concept. From the law cases that were handled by the Court of Justice of the European Union (ECJU) and the European Court of First Instance (ECFI), the principle of good administration was contained, but it didn't have the same legal power as that of a right. The above European Courts have stressed numerous times the importance of procedural guarantees as a counterweight

[3]Treaty of Lisbon amended the Treaty on European Union and the Treaty establishing the European Community (OJ C 306, 17.12.2007) and entered into force on 1 December 2009. It must be recalled that the Treaty of Lisbon started as a constitutional project at the end of 2001 (European Council declaration on the future of the European Union, or Laeken declaration), and was followed up in 2002 and 2003 by the European Convention, which was responsible for drafting the Treaty and at this ways establishing a Constitution for Europe (Constitutional Treaty). Reference: https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon

to administrative discretion. ECJ has further recognized an array of general administrative principles, such as:

- the general principle of administration through law.
- the principle of non-discrimination.
- the principle of proportionality.
- the principle of legal certainty.
- the protection of legitimate expectations.
- the right to a hearing before an adverse decision is taken by a public authority.

With the intention of facilitating the reader's understanding, I consider a rather sensible choice to define the legal concept of "principle" so as to show the striking differences between both terms and the weaker nature that a principle has in contrast to a right. According to Semmelmann (2013):

> A principle is a norm (understood in a broad sense) that shows a certain degree of inherent structural generality in the sense of an indeterminate, abstract, programmatic, non-conclusive or orientative character…principles are frequently unwritten, do not usually form a part of legislation or act easily traceable to legislation. Thus, they are not part of the uncontroversial sources of law. Principles generally incorporate values and morality, and may reflect ideologies and political choices. (Semmelmann, 2013, p.460).

Another key observation is that exist 3 different types of principles with varying effects when put into force. More precisely:

- some principles are quite consistently interpreted to generate enforceable rights for citizens and legal persons, such as general principles governing the investigation of a matter, which concern specifically the activity of the public administration in its relationship with the citizens, e.g. transparency, duty of care, etc.; —
- some principles are often not interpreted to generate enforceable rights for citizens and legal persons, such as organisational/internal principles, that are guidelines concerning the activity of the public administration but do not directly concern the relationship to the citizens, e.g. clear allocation of responsibilities, efficiency, etc.; and —

- some principles may generate enforceable rights, but not systematically, such as general principles governing administrative actions, e.g. consistency, legitimate expectations, etc (European Parliament[4], 2015, p.1426).

Based on what we noticed previously, not all principles convey the same status in terms of their effects, and in some cases, they do not convey the status of a general principle of EU law. A principle that has been established in the secondary law, but has not received the status of a 'general principle of EU law' by the CJEU may be overlooked by the EU legislature (European Parliament[5], 2015, p.1424). In any case, the right to good administration constitutes a general principle of the EU law[6].

To sum up, before the ratification of the Charter it fell on the judges' shoulders to make the final interpretation of the principle of good administration depending on the cases they had before them and the existence of previous decisions. This is reasonable, to some extent, given that the CJEU implements the case-by-case development of principles. Indeed, when the CJEU makes an association with a general principle of EU law, it appears to be a common practice to use very few words, and sometimes the used terms are almost identical. This situation creates a little bit of confusion. For instance, in several rulings, there is a reference to the "principle of good administration" and the "duty of care" (Hofmann, Rowe, and TÜrk, 2011, p.195) or "diligence" (Bousta, 2013, p.481) in the same sentence, while it is extremely hard to draw a clear line between the used terms. Notwithstanding, all the above terms are cardinal even if sometimes they overlap.

[4]European Parliament (2015). Directorate-General for Internal Policies of the Union, Puigpelat, O., Ziller, J., Hofmann, H., et al., *The general principles of EU administrative procedural law: in-depth analysis*. **https://data.europa.eu/doi/10.2861/641578**
[5]Ibid note 4.
[6]Judgment of 8 May 2014, *N.*, C-604/12, EU:C:2014:302, paragraph 49.

3) *Council of Europe and the Strasbourg Court*

The influence of the Council of Europe in combination with the jurisprudence of the Strasbourg Court on Articles 6 and 13 of the ECHR[7] can be traced in some of the provisions of the Charter, which are related to the good administration aspect.

Also, the Council of Europe had a significant contribution as regards the produced recommendations. Those recommendations are related directly or indirectly to good administration. A few indicative examples are the next ones: a) Recommendation No. R (80) 2 concerning the exercise of discretionary powers by administrative authorities, b) Recommendation No. R (87) 16 on administrative procedures affecting a large number of persons, c) Recommendation No. R (2000) 10 on codes of conduct for public officials and d) Recommendation No. R (2007) 7 on good administration[8].

The last mentioned Recommendation No. R (2007) on good administration laid down in Section I the components of the term in detail:

- Article 2 – Principle of lawfulness
- Article 3 – Principle of equality
- Article 4 – Principle of impartiality
- Article 5 – Principle of proportionality
- Article 6 – Principle of legal certainty
- Article 7 – Principle of taking action within a reasonable time limit
- Article 8 – Principle of participation
- Article 9 – Principle of respect for privacy
- Article 10 – Principle of transparency

[7]Council of Europe. (1953). European Convention of Human Rights https://www.echr.coe.int/documents/convention_eng.pdf

[8]Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration. https://rm.coe.int/16807096b9

4) *The Ombudsman*

The influence of the European Ombudsman on the drafting of Article 41 was rather crucial due to the institution's role. It is widely known that the Ombudsman's mission is to promote good administrative practices. In consequence, the decisions of the Ombudsman are revolving around the principle of good administration and how to achieve it, while avoiding cases of maladministration. However, the European Ombudsman is not 'a judge', but mostly acts as an intermediary between citizens and the institutions of the EU.

For Ombudsman to intervene, the submission of a complaint is necessary first. If Ombudsman accepts the complaint as a case of maladministration, then inform the institution concerned for addressing the problem and the latter resolves it. When the Ombudsman finds a case of maladministration but the problem is not resolved, the Ombudsman will seek a "friendly solution", if this is possible. If the friendly solution choice is unsuccessful, Ombudsman may issue a recommendation to the institution, which will explain the necessary steps that are required for the problem's remedy. If the institution does not accept the recommendations, the Ombudsman may send a "special report" to the European Parliament[9]. Irrespective of what the response of the institution will be, Ombudsman has to inform the person who submitted the complaint all the way long.

For avoiding any potential misunderstanding, the European Ombudsman cannot investigate:

- Individual EU officials. The Ombudsman investigates possible maladministration by institutions, not the conduct of officials. If presented with a case of alleged harassment, for example, the Ombudsman examines how the institution has dealt with the problem rather than the conduct of the individuals concerned. The Ombudsman's inquiries do not constitute a disciplinary or pre-disciplinary procedure.

- Complaints against national, regional, or local authorities in the Member States, even when the complaints are about EU matters[10].

Before the proclamation of the EU Charter of Fundamental Rights (hereinafter, "Charter"), the Ombudsman called for the adoption of a Code of Good Administrative Behavior[11] (hereinafter "Code"). In 1999, the Ombudsman drafted the Code of Good Administrative

[9]European Ombudsman. (2011). The European Ombudsman's guide to complaints, https://www.ombudsman.europa.eu/el/publication/en/11469
[10]Ibid note 9
[11]European Ombudsman. (2001). European Code of Good Administration Behavior https://www.ombudsman.europa.eu/pdf/en/3510

Behavior, which finally was adopted by the European Parliament in September 2001. This Code constitutes an excellent opportunity to put the principles of good administration into practice in day-to-day work and to provide more efficient and transparent services to the citizens. It also serves as a useful guide for civil servants in their relations with the public. Civil servants, who decide to follow the Code, can avoid any misfortunes while performing their duties and can be sure about the high quality of their services. Some of the general principles of administrative law set out in the European Code of Good Administrative Behavior are the subsequent (Batalli & Fejzullahu, 2018, p. 31):

a) The principle of legality,
b) The principle of non-discrimination,
c) The principle of proportionality,
d) Absence of abuse of power,
e) Principle of impartiality and independence,
f) Legitimate expectations and consistency,
g) Data Protection,
h) Access to information and documents.

Despite the obvious advantages of the Code, it must be kept in mind that it is not a legally binding document for the EU institutions and bodies with all the problems that this leads to, given that everything is based on the 'good will' of the relevant institutions to implement it. At present, aside from the Code, there are various individuals Codes at the EU institutions' like the one that the Commission[12] designed. Those Codes that enough similarities in terms of content as the European Code of Good Administrative Behavior (Réka, 2018).

5) *National Laws*

National laws influenced the development of European administrative law, mainly through the transfer of various general principles to the EU law, which in their turn were further used and elaborated by the jurisprudence of the Court of Justice. Without any doubt, the opposite process is also possible, namely several European administrative principles to be infused into the national legal systems for reaching better decisions. This is called by some as "Europeanization of national administrative law" (Klucka, 2017). The same author proceeds further with his line of argument by suggesting that:

[12]The Code of Good Administrative Behaviour – Relations with public for the staff of the European Commission in their relations with the public, OJ L 267, 20.10.2000, as part of the Commission's Rules of Procedure C(2000) 3614.

One may claim that current European principles of administrative law not only influence the administrative law of the Member States in areas where they implement Community law based on their own administrative legal rules (so-called indirect Community administration) but also in those areas where national administrative law is applied in a purely national domain of competence. This process of mutual cross-influence favors development that could ultimately sow the initial seeds of a pan-European administrative law. (Klucka, 2017, p.1049).

Before this attainment of a pan-European administrative law, many steps need to be taken before and there must be a greater legal and administrative (and not only) convergence between the different traditions that exist across the countries of the European Union. Concerning administrative convergence, the latter "implies a reduction of the variability and disparities in the administrative agreements" (Pollitt, 2002, pp. 471-492). The opposite view states that Europeanization effort of domestic administrative law has certain limits. As said by Stelkens and Andrijauskaitė (2020):

'EU administrative law' does not go beyond the implementation of EU law and has to respect the principle of 'conferral' of Article 5 (1) TEU. Consequently, the discussion on the 'Europeanization' of the domestic administrative law of EU Member States by EU law is in general a discussion about the existence and (specific) limits of EU competences to carry out activities having a direct or indirect effect on those areas of administrative law of the EU Member States which may be considered as 'core', forming the 'character' of their administration and the relationship between the national administration and the public. (Stelkensand and Andrijauskaitė, 2020, pp.6-7).

By combining those views, it can be inferred that the Europeanization of the domestic administrative law of EU Member States by EU law is not something that occurs in a 'single day', while certain limitations can be traced.

Chapter 2: The Principle of Good Administration in the Greek Legal System

2.1 Introduction to the Greek Administration Milieu

The perennial pathogenies of the Greek public administration have been a 'brake' on the development of an effective system, which can satisfactorily and directly serve the citizen and businesses and harmonize with the pace of socio-economic changes and the need to adapt to the changing international and European environment. The country's inefficient administrative structure further slowed economic and social development, fueling a labyrinthine, bureaucratic, and clientelistic model, which reproduced more problems than it solved. This model was identified with pathogenies such as legal formalism, the absence of management methods, tools, and techniques), the dispersion and waste of structures, people, and resources, the lack of coordination, vision, and strategic directions, the short-term development of public policies, etc.

The most basic manifestations of this inefficient and anti-developmental ecosystem can be identified in the multiplicity and lack of regulatory planning, in the overlapping of responsibilities between public bodies, but also many cases between different units within the same public body, in the establishment of a multitude of mutually negating, labyrinthine administrative procedures, often without a visible reason, combined with the lack of digital systems, infrastructure, and know-how, as well as the will to address weaknesses in a long-term and holistic manner.

In particular, regarding the multiplicity and non-observance of the principles of good legislation, it is observed that the thousands of scattered and fragmentary rules of law, i.e. the applicable legislative and regulatory provisions, not only cause confusion and difficulties in their interpretation and application, burdening the public services and undermining the administration of justice and the reasonable duration of the trial but, in addition, also wasting the time of the individuals, burdening the institutions and ultimately the economy. The wide dispersion of legislative provisions is accompanied by the lack of mechanisms for gathering systematization and clarification of the legislative material, as well as limited codification.

Furthermore, a particularly vast problem is the labyrinthine and extensive bureaucracy created by the tens of thousands of registered responsibilities and the general regulatory framework of the bodies of the central and decentralized administration and the Local government of the first and second level. This detailed recording, which is done outside of a framework of strategic

planning and regulatory programming in combination with the existence of complicated, complex, and non-automated administrative procedures, creates a bureaucratic labyrinth, which works to the detriment of efficiency, good administration, and serving of citizen. At the same time, it contributes to the consolidation of perception at all levels of management, that to be efficient one should be granted "additional powers", while in reality very few of them lead to practical results.

The quality of a country's public administration and governance is a key factor in its economic performance and the well-being of its citizens. An efficient public administration serves the needs of citizens and businesses. Public authorities must be able to adapt to changing circumstances. The reform of the public administration and the public sector was an important area of government initiatives during the previous period in the context of the fiscal weakness in which the country found itself, being an institutional condition of the fiscal consolidation and sustainable reconstruction of the state and at the same time constituting a challenge for the increasing its economic activity and productivity.

The need for reforms for a more effective and efficient operation in the management of public affairs is systematically and repeatedly pointed out by all involved parties, bodies of political power, academic bodies, and representatives of civil society. The importance of the need to reform the public administration also emerges from the fact that this issue is permanently kept on the agenda of public dialogue and political reform programs. However, despite the initiatives taken over time and the steps taken, especially in the last decade, the administration has not been able to follow the evolution of the needs and demands of the Greek economy and society, characterized as "reduced capacity for reform".

At the same time, the need for the digital transformation of the state, central and wider public administration, and the transition to an era of simplified, digital and efficient services, through a more efficient and citizen-friendly environment is becoming increasingly imperative. The integration of new technology and innovative tools in the public sector to speed up and simplify the administrative experience is rapidly gaining ground at the European level making similar initiatives necessary. The digital transformation of public administrations across Europe is a way to deliver faster, cheaper, and better services. E-government improves efficiency and increases user-friendliness and accessibility. It also contributes to promoting ethical practices and reducing the risks of corruption. In recent years, significant efforts have been made through structural changes to simplify administrative procedures and interconnect public services to improve the

efficiency of public administration and the quality of regulations, for the benefit of citizens and businesses and the ability to adapt management to modern requirements.

To wrap up, the whole system as it has been sketched before for the case of Greece is the 'opposite' of the term of good administration. This system traps the social forces in unnecessary bureaucratic anchorages, as a result of which the impetus to the development process of the country is suspended and the everyday life of the citizen is not improved.

2.2 The Good Administration as a Principle in the Greek Legal Order

The **Council of State** often invokes the principle of good administration but avoids defining it positively. In essence, the Council of State usually defines the principle of good administrating negatively[13] and tends to equate good administration with the abuse of discretion that on many occasions the Greek administration seems to demonstrate an inclination.

With regards to the **Greek Constitution**[14], article 10, par. 1 guarantees the right to "report" to public authorities. The connection to good administration emerges from the prescribed obligation of the authorities to act according to law and to respond to citizens' written reports-requests by explaining their actions. The third paragraph of the same article reinforces this connection to the bodies of the Administration to provide information and grant documents to interested parties within a period not exceeding 60 days. Therefore, this constitutional provision gives us three basic elements of the principle of good administration, i.e. the legal action of the administration, the reasoned response, and the response within a reasonable time.

In addition, the right to be heard is also important, as it is exposed in article 20, par. 2 of the Greek Constitution. This is the obligation of the administration to call the individual to provide explanations and clarifications, before the reception of any adverse measure against him. It is also clear that the right to be heard of the interested party remains meaningless and largely loses its content if it is not accompanied by the right of access to documents and information in general, which in our legal order was carried out by revising article 10, par. 3 of the Greek Constitution.

[13]See Administrative Court of Appeal Ath 230/2012,
[14]**The Constitution of Greece** (2019) Revised – Official Gazette 211/A/24-12-2019. https://www.e-nomothesia.gr/syntagma/suntagma-tes-ellados-2019-anatheoremeno.html

At this point, it needs to be made clear that the provisions of articles 10, par. 3 and 20, par. 2 of the Greek Constitution are provisions of direct enforcement. Therefore there should not be misinterpreted the wording "as prescribed by law" of art. 10 par. 3 section a' of the Greek Constitution, as this reservation concerns the legislative regulation of the way of response on behalf of the authorities.

Another source is the **Code of Administrative Procedure**[15] which was established by law 2690/1999 (Official Gazette A΄45/9.3.1999). Its enactment aimed to create a climate of security and trust between citizens and administration, through the systematization of the rules and principles that govern administrative action, to address the problems arising from the multiplicity and complexity of the procedures. In addition, the basic pursuit of the Code was to establish the conditions for the communication of citizens with the administration and processing of their cases based on the principles of transparency, equal treatment, and respect for human protection. As can be expected, elements of good administration are made part of the Greek Code.

Article 3 of the Code of Administrative Procedure, which is titled "Applications to Administration", is a legislative specialization of the way of exercising the constitutional right to petition. The third paragraph refers to the "facilitation of the interested parties", with the usage of forms that the Greek administration must provide for all the issues. In article 3, par. 6a of the same article speaks about the immediate search of supporting documents or certificates, issued by the public or Local government or Legal Entities of the Pubic Administration on behalf of the competent agency.

In article 4, par. 1a of the Code of Administrative Procedure, mentions the obligation to answer, and generally handle the cases of citizens, within 50 days, subject to another more specific provision forecasting a shorter deadline. This provision covers another aspect of the principle of good administration regarding the timely action that the administration has to oblige. In the same article, par. 2, there is a provision that states that the authority should inform the interested party 5 days before the expiration of the deadline, citing the reasons for the delay, so that special justification arises in relation to the element of “objective weakness". In addition, the administration should notify the citizen about the name’s employee who handles the case and his/her telephone number as well as any other important information.

[15]**Law 2690/1999** - Official Gazette 45/A/9-3-1999 (Codified). Sanction of the Code of Administrative Procedure and other provisions. https://www.e-nomothesia.gr/kat-demosia-dioikese/n-2690-1999.html (In Greek).

As regards access to documents, this is governed by art. 5 of the Code. In par. 6 of the same article, the legislator has set a short deadline of 20 days to satisfy or reasonably reject of the citizen's request. Furthermore, art. 6, par. 2 sub. b ' stipulates that the summons for a hearing are notified 5 full days before the day of the hearing, to grant the interested party the required preparation time, while the third paragraph of the same provision expressly provides for the right of the interested party to take into consideration the details of his/her file so as to provide counter-evidence. Complementary to the above, but by no means negligible, is the assistance of the principle of impartiality, which is reflected in art. 7 of the Code of Administrative Procedure, according to which single-membered or in a collective formulation the administrative bodies need to perform their duties with integrity, objectivity, and neutrality.

In 2012 the Greek Ministry of Administrative Reform and Electronic Governance in collaboration with the Greek Ombudsman released a **Guide**[16] **regarding Good Administrative Behavior**. The principles and rules of this Guide are addressed to public servants who serve in the Central government (Ministries, General and Special Secretariats, Decentralized Administrations, Independent, and Regulatory Administrative Authorities, etc.), and the Local government of the first and second level and other Legal Entities of Pubic Administration. The purpose of this Guide is three folded: a) to define the environment that should exist in the public services, b) to formulate as clear as possible the rules of conduct for public servants, and c) to inform citizens about how the public administration should treat them, as well as for the basic rights granted to them by law during their transactions with the public administration services, but also for their corresponding obligations.

The principle of good administration can be found on page 29 of this Guide. In particular, the principle of good administration requires administrative bodies to exercise their powers following the principles of good administration, so that when applying the relevant provisions to avoid harsh and doctrinal interpretations. Essentially, the guide admits that the concept of good administration remains a very general one, an indefinite principle. Administration's discretion should not allow causing any suffering to the citizen for no reason. When the administration acts within its discretion power, it must protect the legal interests of the citizens and facilitates the exercise of their rights.

[16]Ministry of Administrative Reform and E-Governance and Ombudsman. (2012). Relations between Public Servants and Citizens: A Guide to Good Administrative Behavior. Public Servants at the service of the public interest and citizens https://www.ypes.gr/wp-content/uploads/2019/09/20120405_sxeseis_DY_politwn_odhgos.pdf (In Greek).

This guide also portrays a very innovative feature, which needs to be stressed as an example of good administrative practice. Under almost every principle, the guide gives an example that was borrowed by administrative reality to explicate it. In the case of the good administration principle, it analyzes the following example:

> A 1998 law defined the conditions and procedure for hiring people with special needs in public and private sector jobs. During the implementation of the law, problems were found regarding the accessibility of the disabled in the selection process (lack of systematic and valid information from the local competent services of the Public Manpower Employment Organization, called briefly OAED), insufficient documentation of the negative decisions of the first instance regional committees, delay in receiving and processing applications due to vagueness of the relevant provisions, and delay on the part of employers recruitment of the selected. These problems, combined with the non-enforcement of the sanctions of the law and the accumulation of objections from employers and non-employers of selected beneficiaries (disabled persons) before the same body, led to excesses delay in issuing final selection decisions and in the creation of an environment of insecurity. This resulted in a violation of the principle of beneficiary administration, according to which administrative action should be governed by flexibility and efficiency, characteristics that should be ensured during its exercise.

Through the display of some examples, as the previous one, the Greek administration can more easily distinguish its pathogenies of its body and probably correct them or at least to reduce them.

Very recently, in July 2022, the Ministry of Interior again in collaboration with the National Transparency Authority published a **Code of Ethics and Professional Conduct for the Employees of the Public Sector**[17]. In the prologue of this Code, the Minister of Interior sets the tone of the whole endeavor by saying:

> The formation of an ethical working environment is the cornerstone of public administration. The adoption of a Code of Ethical and Professional Conduct expresses its commitment to the moral values of an administration that must imbue the employees.
>
> The Code of Ethics and Professional Conduct was drafted drawing on contemporary literature and international best practices on matters of public integrity which prejudge a system that is based more on moral values (value-based) than on rules.

[17]Ministry of Interior and National Transparency Authority (2022). Code of Ethics and Professional Conduct for Public Sector Employees. https://www.ypes.gr/wp-content/uploads/2022/07/KodikasIthEpaSympYpalDimTom-Ioulios2022-20220725.pdf (In Greek).

> Finally, this Code comes to update and enrich an earlier effort of the Ombudsman and the Ministry of Administrative Reform and Electronic Government focusing, now, based on new data and challenges, such as the usage of the Internet, teleworking as well as creating a coherent and modern framework for prevention, treatment and combating forms of violent behavior and harassment and unequal treatment in the workplace. (Code of Ethics and Professional Conduct for the Employees of the Public Sector, 2022, p.5).

This Code of Ethics and Professional Conduct for the Employees of the Public Sector underlines once more the importance of good administration. On page 12, there is a special reference to the fundamental values of public administration. The first described value bears the title "Respect to the Constitution, laws, and institutions". The third sub-value (c) of the aforementioned value is the "Compliance with the values of administrative action", while the previous two sub-values include: a) "Compliance with the law" and b) "Serving the public interest". The analysis of the sub-value "Compliance with the values of administrative action" as it is analyzed in the Code says that "Employees adhere to the principles governing the administration action and in particular the principles of legality, discretion fluency, **good administration**, justified trust of the governed, proportionality, equality, good faith and leniency". (Code of Ethics and Professional Conduct for the Employees of the Public Sector, 2022, p.12). In a word, good administration is a prerequisite for every public administration that characterized itself as modern and close to citizens' needs.

2.3 Good Administration as a Moral Principle

The principle of good administration in Greece has been established by the jurisprudence of the administrative courts and in particular the Council of State. Aside from its legal aspect, it is also an ethical principle of administration, as it seeks to adapt the administrative function, based on the concept of ethics, justice, equality, transparency, and respect for the personality of the governed. Good administration is the exercise of administrative responsibilities in a way that does not offend the currently valid conceptions of the morality of the whole (Tachos, 1971, p. 134). The term has always conveyed a moral and political character.

The first 'nugget' of good administration stems from Plato's work. The central idea in the "State" («Πολιτεία») is the fundamental principle of justice. Plato attempted to determine justice through the Socratic method of dialectics and finally to decide whether the life of a just man is

preferable to the life of an unjust. He argues that justice is good, which is preferable not only because of the results it produces but also because it constitutes self-worth (Soufrila, 2015, p. 34). Therefore, he rejects the approach in which justice consists in benefiting friends and harming enemies since justice could never permit harming other people, even if they are enemies. Next, he reconstructs the argument of the sophist Thrasymachus, according to which justice lies in fulfilling the interests of the stronger, and reveals his strong moral skepticism (Soufrila, 2015, p. 34).

From the outline presented in the immediately preceding section, it follows that the principle of good administration is not explicitly reflected in any constitutional provision embedded in the Greek legal order. However, it is derived interpretatively from provisions of both the Constitution and formal laws, while it has also been shaped considerably by the jurisprudence of the Council of State and other courts. Therefore, the principle of good administration governs the entire legal order and is invoked in the event of a void in the 'legal architecture'. Thus, it can be supported that good administration has a formal force superior to that of classic normative acts, but inferior to that of a formal law. Lastly, good administration has a strong ethical and political element, which goes back in time (Plato's work).

Part II

The Right of Good Administration in the EU Legal Order

Chapter 1: Good Administration as an established Right in the EU law.

1.1 Defining the term "Good Administration" in the light of the EU Charter of Fundamental Rights

Providing a definition can be a demanding task, due to the different levels (national State & EU institutions) and time frameworks that a legal term has been developed. On this matter, it has been suggested that the definition of good administration is very "nebulous" (Pervou, 2014, p.9). Others claim that the term good administration could be deemed as an "umbrella term" (Mustafa, 2017, p.260). In a similar vein, Mendes (2009) asks a critical question: what good administration is? Is it a right, a principle, an objective, or a standard? This question sets in motion the further investigation of the term to understand its real nature.

The up-to-date definition as regards the European legal framework comes from the EU Charter of Fundamental Rights which falls into the category of primary law. The Charter has been a legal source of the EU since 1 December 2009 and in practice, the "Right to good administration", which is presented in article 41 is a general category under which may be incorporated different rights. Those different and subjective rights aim to reduce arbitrary administrative conduct in the Union. Consequently, article 41 refers to a category of rights, rather than as a right on its own.

Good Administration is enshrined in Article 41[18] and defined as the following:

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

2. This right includes:

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

[18]European Union Agency for Fundamental Rights. Article 41, Official Journal of the European Union C 303/17 - 14.12.2007. https://fra.europa.eu/en/eu-charter/article/41-right-good-administration?field_fra_country_target_id%5B0%5D=1009&field_info_deciding_body_type_target_id%5B721%5D=721&field_info_deciding_body_type_target_id%5B722%5D=722&field_info_deciding_body_type_target_id%5B723%5D=723&page=1

(b) 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;

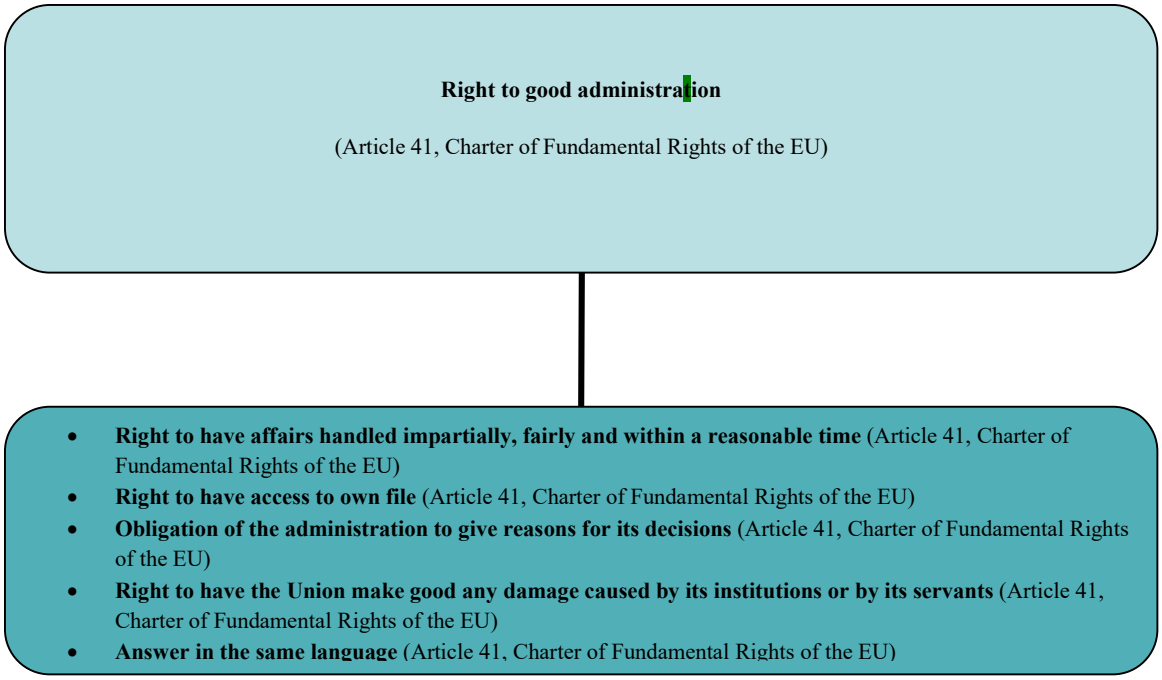
(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union 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".

In particular, the *first paragraph* of that provision establishes impartiality, fairness, and within a reasonable time examination of the person's affairs. The *second paragraph* contains an indicative list of more specific rights that derive from the right to good administration and will be analyzed extensively below. The *third* paragraph refers to the compensation that needs to be made by the European Union or by its institutions or its officials for any damage caused during the performance of their duties. To make the long story short, this paragraph offers guarantees of the principle of liability. Finally, the *fourth paragraph* of Article 41 of the Charter includes the right of a European citizen to be able to address his views in one of the languages of the Union and to receive a reply in the same language. This is the so-called "right to correspondence".

A very nice visualization of the right to the good administration of the Charter is the next one:



More analytically, *paragraph 2 of article 41* of the Charter includes **the right of the affected citizen to be heard** before an adverse individual measure is taken. The right to be heard is enshrined in most of the Constitutions of the Member States, including the Greek one (article 20). Any individual action, material action, or regulation of the EU administration, which causes any form of damage to the interests of citizens, should be considered an adverse individual measure. This also includes other specific rights, such as **the obligation of prior information** on the part of the administration regarding the factual and legal circumstances on which the adverse measure will be based, the **right of the person to submit his/her opinion** regarding this measure, as well as the administration's **obligation to take into account the views of the person** when implementing the measure in question.

The **right of a person to access his or her file** complements the other rights to defence. This right is not limited only to cases of taking an unfavorable measure, but also concerns those procedures that result in the issuance of a beneficial act, such as the granting of social benefits. The right of access to the documents does not include all the documents that make up the case file, but only those documents that form the basis of the decision and are directly related to the person's case are considered necessary for formulating his/her defence before the expected decision. It must be noted that it does not, however, give the right to the person to access the files

of others involved in the same procedure. It is therefore different from the right to access documents found in Article 42 CFR. This right is restricted when it conflicts with the legally protected interest of confidentiality and professional or business secrecy, restrictions which may be related to reasons of internal security of the Member States or reasons of personal data protection. Nevertheless, the decision to keep certain information is always subject to judicial review.

Moreover, the right of access to documents was reinforced under Regulation 1049/2001. In particular, the European Parliament and Council adopted a Regulation to give access to the documentation of the Council, Commission and European Parliament in all areas of activity of the European Union including those connected to common foreign and security policy and to police and judicial co-operation in criminal matters (Wakefield, 2007c). Deep down the goal was to enhance open governance and the democratic ideals. As said clearly on the Special Report by the European Ombudsman to the European Parliament following his own-initiative inquiry into public access to documents (C4-0157/98):

(I)t should be noted that work towards transparency took a great step forward when the Community institutions and bodies adopted rules for public access to documents. However, one could be forgiven for thinking that some of the institutions and bodies concerned have not been over zealous in their efforts to create and implement constructive rules. Many rules seem to have been created for their own sake and without too much consideration and reflection from the institution or body; in too many cases it seems that the work towards greater transparency and openness is looked upon as a necessary evil that should be implemented with the least possible effort and change to existing administrative routines.

Under any circumstances, the administration **must give reasons for its performed actions(c)** and this duty is closely linked to the right to an effective remedy as has been analyzed in Article 47 CFR and can also be found in 296(2) TFEU. However, "it would be excessive to require a specific statement of reasons for each of the technical choices made by the institution"[19] because this could interrupt the normal operation of the institution or increase the administrative burden.

Lastly, it is noteworthy to clarify here that the Charter is legally binding in all EU Member-States and covers the function of the institutions and bodies operating in the Union. The power of the Charter isn't extended to the national authorities.

[19]**Joined Cases C-78-79/16**, Pesce and Serinelli, para 90.

1.2 The Charter's Novelty

What is the novelty that the Charter brought? The Charter is the first agreement that considers "good administration" as a ***fundamental right*** and also provides a ***positive definition*** in opposition to the *negative definition* of "maladministration" that takes place when a public institution doesn't comply with a rule or principle which is binding upon it (Soderman, 2005). More in favor of the right of good administration is the view of Wakefield (2007a) who characterized the right to good administration as something "novel" or even "revolutionary" because it is the first time that "any legal system has proclaimed it and then sought to constitutionalise it" (Wakefield, 2007a, p.2).

Furthermore, article 41 combines "a set of overarching principles of administrative procedure, framed as subjective rights" (Kanska, 2004, p. 308). Subjective rights are responsible for the shaping of relations between legal subjects that depend on the rule of law for their recognition and enforcement. What is more, article 41 of the Chapter refers to "every person" (Craig, 2014) and not "citizens". This is a clear indication that the above rights are not bounded by the nationality aspect (European citizens or residents) of a party to the proceedings, but are much broader. For instance, those rights can also be used by a corporation that takes the form of a legal person. In that way, the European Union probably wanted to send a strong message to its external environment regarding the values of EU and to provide certainty of rule and legal order for all. Close to this opinion is what is mentioned by Wakefield (2007b) who says that the Charter of Fundamental Rights is seen to have the potential to provide political and moral legitimacy to the EU, while gives the opportunity to European citizens to be connected to this political space.

1.3 Good Administration as an established Right in the EU law

The content of the right to good administration in the European jurisprudence had been formed jurisprudentially before the drafting and placement in the validity of the Charter. One of the first Treaty documents dealing overtly with the underlying principles of good administration was a 1977 resolution of the Council of Europe. This resolution contained five fundamental principles: the right to be heard; the right of access to information; the right to assistance and representation; the obligation to provide reasons for decisions; and finally the obligation to notify affected parties of remedies available against an act of the administration. Later on, some landmark

decisions such as the Tradax[20] and the Technische Universität München[21] were issued and ever since the 'good administration' was a very frequent wording in the case law of the European courts but "without excluding the meaning embodied in 'proper' and 'sound' administration" (Hofmann, Rowe, and TÜrk, 2011, p.193).

The right to good administration is a **procedural fundamental right.** "Procedural rights usually refer to constitutional and nonconstitutional (statutory or common law) legal rights that govern official adjudications" (Alexander, 1998, p.23). t. The Community Courts have a very critical contribution in relation to procedural rights because as Lenaerts and Vanhamme (1997) have noted:

> they must specify the precise contours of those rights in the particular contexts of substantive law as well as the sanction to be applied in case of their infringement (e.g. automatic annulment of the decision taken at the end of a flawed administrative procedure, or annulment only when the infringement of the rights involved has possibly had an adverse impact on the outcome of that procedure). (Lenaerts and Vanhamme, 1997, p.568).

Apart from its procedural nature, the right to good administration helps the fulfillment of the Union's commitment to the rule of law (Article 2 TEU) and also allows the fulfillment of other important objectives, which cannot be overridden, such as the administration to pay the necessary respect to the individual; the enhancement of administration's efficiency and the strengthening of EU citizenship. Especially the latter (EU citizenship) is vital with the purpose of reinforcing the political dimension of the Union, instead of its economic component and enhancing the trust of European citizens towards the EU institutions. In doing it is required the citizens to be active in the political and administrative procedures of the Union. For that reason, there is also the opinion that the good administration right should be seen as an "individualized public right" (subjective public right), i.e. a right of a public nature which exists for the benefit of the general public interest and for which it is always possible the governed to sue the state" (Kanska, 2004, p.300).

To finish, some experts in the field (Sole, 2011, p.140) perceive both article 41 of the Charter and the Code as: "a kind of procedural coding", which can be "the starting point for future codification of administrative procedure in Europe". The benefits of this future codification could bring an increase in legal certainty, vertical alignment between the EU and the Member

[20]**Case 64/82** Tradax v Commission [1984] ECR 1359
[21]**Case C-269/90 (ECJ),** Technische Universitat Munchen v Commission [1991]

States, and horizontal alignment between the Member States, which would ameliorate the way of applying the EU law (Sole, 2011, p.140).

1.4 Cases of Good Administration

This section will pay attention to a few cases that were brought in front of the Court's jurisdiction before and after the enforcement of the Charter. In that way, different aspects of the principle of good administration are going to be investigated. The selection of those cases was based on two criteria: 1) their importance as cases, and 2) the personal along with professional interests of the author. The cases are organized in chronological order from the oldest to the newest and contain 3 sub-headings, namely the background of the case, the position that the Court maintained and the overall commentary of the case.

1.4.1 The right to be heard

Case 85/76[22] (ECJ), Hoffmann-La Roche v Commission, 1979

Background of the case

On 27 August an application was lodged by the Swish Company Hoffman-La Roche & Company AG (hereinafter referred to as "Roche") for the annulment of the Commission decision of 9 June 1976 (IV/29.020 - Vitamins) relating to a proceeding under article 86 of the EEC Treaty, and the alternative claim was the annulment the relevant decision which imposed upon the applicant a fine of 300 000 units of account, being 1 098 000 Deutschmarks.

In that decision, the Commission finds that Roche kept a dominant position within the common market, within the meaning of article 86 of the Treaty, on the markets in vitamins A, B2, B3, B6, C, E, and H and that it has abused that position and thereby infringed the aforementioned article. Roche was putting forward an obligation upon purchasers or other incentives to buy all or most of their requirements of vitamins exclusively or in preference from Roche. According to the applicant the concepts of dominant position and abuse of such a position in article 86 are among the most indeterminate and vague concepts both in community law and in the national law of the member states and consequently, by applying a fundamental legal principle which should be deduced from the legal maxim "nullum crimen, nulla poena sine

[22] **Case 85/76 (ECJ)**, Hoffmann-La Roche v Commission.

lege", the Commission may not impose the penalties provided for in the case infringement until the above concepts take a more sufficient meaning either by administrative practice or by case-law. Consequently, the submission is only concerned with the fine imposed.

In support of its application the applicant makes the following submissions:

-First submission: The contested decision infringes the fundamental principle that rules about penalties must be certain and foreseeable.

-Second submission: The contested decision, as a result of irregularities in the administrative procedure upon the conclusion whereof it was adopted, has several formal defects.

-Third submission: The contested decision infringes article 86 of the Treaty in that the Commission incorrectly interpreted and in any case inaccurately applied the concepts of a dominant position and of the abuse of a dominant position which may affect trade between member states by finding that Roche was in such a position and by treating the agreements in question as constituting such an abuse.

- Fourth submission: The contested decision, by imposing a fine upon Roche, has infringed article 15(2) of regulation No 17 of the Council of 6 February 1962. The applicant has also relied in its application on the infringement of article 18 of regulation No 17 of the Council of 6 February 1962 and of financial regulation no 68/313 of 30 July in that the fine has been converted into Deutschmarks but during the proceedings, it withdrew this submission. So, only 4 submissions were examined.

Presentation of the second submission: Irregularities in the administrative procedure

The applicant in the first place submitted in its application that the procedure initiated by the Commission was irregular having regard to the fact that documents for internal use by its departments came unlawfully into the possession of the Commission. Roche withdraws later on this accusation and in the second place claimed that in the disputed decision, particulars whereof were not given during the administrative procedure, and other evidence which the Commission refused to let it inspect because of the duty to respect professional secrecy were taken into account. In addition, the company said that Commission obtained from other vitamin manufacturers and with the help of which is calculated the market share which it claims Roche had and also to the information requested and obtained from the applicant's customers to determine whether or not the contracts were the result of an abuse of a dominant position which led to the restriction of competition.

Position of the Court

Observance of the right to be heard is required in all proceedings in which sanctions, in particular fines or penalty payments, may be imposed as a fundamental principle of community law. It must be respected even if the proceedings in question are administrative. In the matter of competition and the context of proceedings for a finding of infringements of articles 85 or 86 of the treaty, observance of the right to be heard requires that the undertakings concerned must have been allowed to make known their views on the truth and relevance of the facts and circumstances alleged and on the documents used by the Commission in support of its claim that there has been an infringement.

The obligation of the commission under article 20 (2) of regulation no 17 to observe professional secrecy must be reconciled with the right to be heard. By providing undertakings from whom the information has been obtained with a guarantee that their interests, which are closely connected with the observance of professional secrecy, are not jeopardized, that provision enables the commission to collect on the widest possible scale the requisite data for the fulfillment of its task of supervision without the undertakings being able to prevent it from doing so; the Commission may not, however, use, to the detriment of an undertaking in proceedings for a finding of an infringement of the rules on competition, facts or documents which it cannot in its view disclose if such a refusal of disclosure adversely affects that undertaking's opportunity to make known effectively its views on the truth or implications of those facts or documents or again on the conclusions drawn by the Commission from them.

Commentary of the Case

Article 19(1) of Council Regulation No 17 obliges the Commission, before deciding on connection with fines, to give the persons concerned the opportunity of putting forward their point of view concerning the complaints made against them. Similarly, article 4 of Regulation No 99/63 of the Commission of 25 July 1963 on the hearing provided for article 19 of Regulation No 17 provides that the Commission shall in its decisions deal only with those objections raised against undertakings and associations of undertakings in respect of which have been afforded the opportunity of making known their views.

Although, the Court in its Judgment of 15 July 1970 held that these requirements are satisfied as far concerns the notification of complaints-the first stage of the administrative procedure-If the notification sets forth clearly, albeit succinctly, the essential facts upon which the

Commission relies, this ruling is subject to the proviso that in the course of the administrative procedure it supplies the details necessary to the defence. Thus it emerges from the quoted provisions above that also the general principle to which they give the effect is that to respect the principle of the right to be heard the undertakings concerned must have been afforded the opportunity during the administrative procedure to make known their views on the truth and relevance of the facts and circumstances alleged and on the documents used by the Commission to support its claim that there has been an infringement of article 86 of the Treaty.

To finish, as Flattery (2000) has supported regarding the principle to be heard in the case Hoffmann-La Roche v Commission, (1979):

> the Court used more restrictive terminology in referring to 'the right to be heard before a sanction or penalty' is inflicted. This formalistic interpretation, repeated in Hoechst I23, was soon abandoned and the courts began to adopt a more liberal position whereby a measure only had to 'adversely' affect or even 'significantly' affect a person's interests. This expansion ensures that the right to be heard can also be invoked by complainants and other interested parties in the infringement proceedings (Flattery, 2002, p.55).

[23]**Joined Cases 46/87 and 227/88 Hoechst v Commission** [1989] ECR 2859, at 15; see also Case 322/81 Nederlandsche-Industrie-Michelin [1983] ECR 3461, at 7.

Joined Cases C-129/13 and C-130/1324 Kamino International Logistics BV and Datema Hellmann Worldwide Logistics B v Staatssecretaris van Financiën 2014

Background of the Case

The joined cases before the Court concern the rights of the defence and, more specifically, the right to be heard in the context of administrative proceedings. A customs agent, namely Kamino in Case C-129/13 and Datema in Case C-130/13, acting on the instructions of the same undertaking, filed in 2002 and 2003 declarations for the release for free circulation of specified goods, described as 'garden pavilions/party tents and side walls'. Kamino and Datema declared those goods under code 6 601 10 00 of the Combined Nomenclature ('Garden or similar umbrellas') and paid customs duty at the rate of 4.7% cited for that code. Following an inspection by the Netherlands customs authorities, the tax inspector found that the classification was incorrect and that the goods concerned should be classified under code 6 306 99 00 of the Combined Nomenclature ('Tents and camping goods'), to which a higher rate of customs duty of 12.2% applies.

As a result, the tax inspector sent, by decisions of 2 and 28 April 2005, demands for payment based on Articles 220(1) and 221(1) of the Customs Code, to effect the recovery of the additional customs duties still due from Kamino and Datema, respectively. Kamino and Datema did not have the opportunity to be heard before the demands for payment were issued. They objected to the relevant demand with the tax inspector, who dismissed it after considering the arguments made. Their appeals against those dismissal decisions were declared unfounded by the Rechtbank te Haarlem. On further appeal, the Gerechtshof te Amsterdam upheld the judgment of the Rechtbank te Haarlem in so far as it required Kamino and Datema to perform their obligations under the demands for payment.

Both Kamino and Datema then appealed on a point of law to the Hoge Raad der Nederlanden. In its orders for reference, the Hoge Raad der Nederlanden noted that, on appeal, the Gerechtshof te Amsterdam found, in the light of the judgment of the Court in Sopropé, C-349/07, EU: C:2008:746, that the tax inspector had infringed the principle of respect for the rights of the defence in so far as he had not offered the interested parties, before issuing the demands for

[24]**Joined Cases C-129/13 and C-130/13,** Kamino International Logistics EU:C:2014:2041

payment at issue, the opportunity to express their views on the information on which the post-clearance recovery of the customs duties was based.

The Hoge Raad der Nederlanden noted, however, that neither the Customs Code nor the applicable national law contains procedural provisions requiring customs authorities to give a customs debtor, before effecting the communication of a customs debt under Article 221(1) of the Customs Code, the opportunity to make known his views as regards the information on which the post-clearance recovery is based. In those circumstances, the Hoge Raad der Nederlanden decided to stay the proceedings and to refer the following questions, which are formulated in the same terms in Cases C-129/13 and C-130/13, to the Court for a preliminary ruling:

1. Does the European law principle of respect for the rights of defence by the authorities lend itself to direct application by the national courts?
2. If the answer to Question 1 is in the affirmative:
   (a) Must the European law principle of respect for the rights of defence by the authorities be interpreted to mean that the principle is infringed where the addressee of an intended decision was not given a hearing before the authorities adopted a measure which adversely affected it but was given the opportunity to be heard at a subsequent administrative (objection) stage, which precedes access to the national courts?
   (b) Are the legal consequences of the infringement by the authorities of the European law principle of respect for the rights of defence governed by national law?

If the answer to Question 2(b) is in the negative, what circumstances may the national courts take into account when determining the legal consequences, and in particular may they take into account whether it is likely that, without the infringement by the authorities of the European law principle of respect for the rights of the defence, the proceedings would have had a different outcome?

By order of the President of the Court of 24 April 2013, Cases C-129/13 and C-130/13 were joined for the written and oral procedure and the judgment.

Position of the Court

The principle of respect for the rights of the defence by the authorities and the resulting right of every person to be heard before the adoption of any decision liable adversely to affect his interests, as they apply in the context of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, may be relied on directly by individuals before national courts.

The principle of respect for the rights of the defence and, in particular, the right of every person to be heard before the adoption of an adverse individual measure must be interpreted as meaning that, where the addressee of a demand for payment adopted in a procedure for the post-clearance recovery of customs duties on imports, under Regulation No 2913/92, as amended by Regulation No 2700/2000, he has not been heard by the authorities before the adoption of the decision, his rights of defence are infringed even though he can express his views during a subsequent administrative objection stage, if national legislation does not allow the addressees of such demands, in the absence of a prior hearing, to obtain suspension of their implementation until their possible amendment. Such is the case, in any event, if the national administrative procedure implementing the second subparagraph of Article 244 of Regulation No 2913/92, as amended by Regulation No 2700/2000, restricts the grant of such suspension where there is good reason to believe that the disputed decision is inconsistent with customs legislation or that irreparable damage is to be feared for the person concerned.

The conditions under which observance of the rights of the defence is to be ensured and the consequences of the infringement of those rights are governed by national law, provided that the rules adopted to that effect are the same as those to which individuals in comparable situations under national law are subject (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights of defence conferred by the European Union legal order (principle of effectiveness). The national court, which is under an obligation to ensure that European Union law is fully effective, may, when assessing the consequences of an infringement of the rights of the defence, in particular the right to be heard, consider that such an infringement entails the annulment of the decision taken at the end of the administrative procedure at issue only if, had it not been for such an irregularity, the outcome of the procedure might have been different.

Commentary of the Case

The conclusion that came out after the C-129/13 judgment was that the right to be heard, which is an indispensable part of the right to good administration, is explicitly associated with the rights of the defence (Clement, 2018). Hence, the CJEU plausibly refers not only to Article 41 of the Charter but also to Articles 47 and 48 of the Charter, which cover all aspects of the right to a fair trial. Nobody denies the importance that the rights of the defence play in the legal EU framework, but it makes you think more critically based on the outcome. The breach of those fundamental rights will not lead to the automatic annulment of the decision that is adopted even if it presents a violation of the right to be heard. The same view has been supported by Papadopoulou (1996, p. 131) who claims that good administration is not, however, absolute. It must be combined with all the requirements that are inherent to the areas in which it applies each time.

According to EU law, an infringement of the rights of the defence and in this case of the right to be heard results in the annulment of the decision taken at the end of the administrative procedure at issue only if, had it not been for such an irregularity, the outcome of the procedure might have been different (*France* v *Commission*, C-301/87, EU: C:1990:67, paragraph 31; *Germany* v *Commission*, C-288/96, EU: C:2000:537, paragraph 101; *Foshan Shunde Yongjian Housewares & Hardware* v *Council*, C-141/08 P, EU: C:2009:598, paragraph 94; and *G and R*, EU:C: 2013:533, paragraph 38). This position constitutes pure teleological reasoning, which is a legal technique of interpretation that the EU Court employs frequently.

A final remark is that the differentiation that is promoted by Court in this case between the administrative and judicial procedure is not such a straightforward task and could perhaps increase further the procedural complexity and paralyze the administrative action if the latter is going to be 'demonized' all the time. This issue is explained better by Clement (2018), who among other things underlines that:

> The CJEU makes a substantial difference between an administrative procedure and judicial procedure. If the right to good administration is to be included in the more general set of the rights of the defence, it does not mean that the rights of defence are automatically violated in the event of a breach of these rights during the administrative procedure. This could be interpreted as referring to the fact that, during the judicial procedure, the rights of the defence could potentially compensate the breach during the administrative procedure. This means that the right of the defence is to be evaluated globally, from the administrative procedure leading to a decision to the final judicial decision. A mere breach of one step in the administrative

procedure does not contaminate the whole procedure if some further steps could compensate the breach. (Clement, 2018, p. 21).

1.4.2 Reasonable time

Case C-566/14 P[25] Jean-Charles Marchiani v European Parliament, 2016

Background of the Case

Mr. Marchiani was a Member of the Parliament from 20 July 1999 until 19 June 2004. He was employed as parliamentary assistant to Ms. T. and Mr. T. between 2001 and 2004 and Ms. B. between 2002 and 2004. On 30 September 2004 an investigating judge at the Tribunal de Grande Instance de Paris (Regional Court, Paris, France) informed the President of the Parliament of the possibility that the duties performed by Ms. T. and Mr. T. between 2001 and 2004 bore no actual relation to those of a parliamentary assistant.

By decision of 4 March 2009, after hearing the parties involved and having consulted the Quaestors on 14 January 2009, the Secretary-General of the Parliament ('the Secretary-General') established that a sum of EUR 148160.27 had been unduly paid to the appellant under Article 14 of the PEAM Rules and requested the Parliament's authorizing officer to take the necessary steps to recover that sum. On the same day, the Parliament's authorizing officer sent the appellant a debit note claiming reimbursement of EUR 148160.27.

On 14 August 2009 the European Anti-Fraud Office (OLAF), after the file on the irregularities concerned had been sent to it by the Secretary-General on 21 October 2008, notified the Parliament and the appellant that an investigation had been opened. On 14 October 2011, OLAF, following an investigation and having interviewed the appellant on 6 July 2011, sent Parliament a copy of its final investigation report ('the OLAF report'). That report found that the appellant had unduly received allowances in respect of the duties performed by Ms. T., Mr. T., and Ms. B. and recommended that the Parliament should take the necessary steps to recover the sums due. On 25 October 2011, OLAF notified the appellant that the investigation had been closed.

On 28 May 2013, based on the OLAF report, the Secretary-General informed the appellant, under Article 27(3) of the PEAM Rules, of his intention to recover all the sums paid by the Parliament in connection with Ms. T., Mr. T., and Ms. B., and invited him to submit his comments in that regard. On 25 June 2013, the appellant was questioned by the Secretary-

[25]**Case C-566/14 P**, Marchiani v Parliament, EU:C:2016:437, para. 56

General at a hearing. On 27 June 2013, the appellant sent the Secretary-General a transcript of the hearing. The Quaestors were consulted by the Secretary-General on 2 July 2013.

In the decision at issue, the Secretary-General established that, whilst the decision of 4 March 2009 provided for the recovery of a sum of EUR 148160.27, an additional amount of EUR 107694.72 had been unduly paid to the appellant, and he requested the Parliament's authorizing officer to take the necessary steps to recover the latter amount. In essence, the Secretary-General took the view that the appellant had not provided sufficient proof that Ms. T., Mr. T., and Ms. B. had carried out the work of a parliamentary assistant. Noting that the sums paid by way of parliamentary assistance allowances amounted to a total of EUR 255854.99, some of which had been the subject of the decision of 4 March 2009, the decision at issue states that the sum of EUR 107694.72 does not comply with the PEAM Rules and that it must be recovered. On 5 July 2013, the Parliament's authorizing officer issued the debit note at issue ordering the recovery of EUR 107694.72 before 31 August 2013.

By application lodged at the Registry of the General Court on 3 September 2013, the appellant brought an action seeking the annulment of the decision at issue and of the debit note, as well. In support of his action, the appellant relied on five pleas in law: first, infringement of the procedure laid down by the Implementing Measures, of the adversarial principle, and of the principle of respect for the rights of the defense; second, incorrect application of the PEAM Rules; third, error of assessment of the supporting documents; fourth, a lack of impartiality on the part of the Secretary-General, and, fifth and last, the claim that recovery of the sums in question was time-barred.

The position of the Court

The Court must consider whether the fourth part of the appellant's fourth ground of appeal, in which the appellant criticizes the General Court for having disregarded the scope of the reasonable time principle, is well founded. In that regard, it must be observed that the reasonableness of a period is to be appraised in the light of all of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity, the various procedural stages which the EU institution followed and the conduct of the parties in the course of the procedure (see, to that effect, judgments of 15 July 2004 in Spain v Commission, C-501/00, EU: C:2004:438, paragraph 53; 7 April 2011 in Greece v Commission, C-321/09 P, EU: C:2011:218, paragraph 34; and 28 February 2013 in Review of Arango

Jaramillo and Others v EIB, C-334/12 RX-II, EU: C:2013:134, paragraph 28 and the case-law cited).

The reasonableness of a period cannot be determined by reference to a precise maximum limit determined abstractly (judgments of 7 April 2011 in Greece v Commission, C-321/09 P, EU: C:2011:218, paragraph 33, and 28 February 2013 in Review of Arango Jaramillo and Others v EIB, C-334/12 RX-II, EU: C:2013:134, paragraphs 29 and 30). As regards the specific background of the particular case, the Court has previously stated that Article 73a of Regulation No 1605/2002, which corresponds, in essence, to Article 81 of Regulation No 966/2012, is intended to limit in time the possibility of recovering European Union entitlements in respect of third parties, to satisfy the principle of sound financial management and fixes, from that perspective, a period of five years, and that Article 85b of Regulation No 2342/2002, which corresponds to Article 93(1) of Delegated Regulation No 1268/2012, provides that the limitation period begins to run on the expiry of the deadline communicated to the debtor in the debit note (see, to that effect, the judgment of 13 November 2014 in Nencini v Parliament, C-447/13 P, EU: C:2014:2372, paragraph 45).

It has been held that, where the applicable texts are silent as regards the deadline for an EU institution to communicate a debit note to a debtor, that period must, in principle, be presumed to be unreasonable where that communication takes place outside a period of five years from the point at which the institution was, in normal circumstances, in a position to claim its debt (see, to that effect, the judgment of 13 November 2014 in Nencini v Parliament, C-447/13 P, EU: C:2014:2372, paragraphs 48 and 49). In that regard, it must be held that having regard to Article 78(1) and (2) of Regulation No 966/2012 and Articles 81 and 82 of Delegated Regulation No 1268/2012, an EU institution is in a position, of normal circumstances, to claim its debt from the date when supporting documents capable of identifying a given claim as being certain, of a fixed amount and due are available to that institution or when such supporting documents would have been available to it, had it acted with the necessary diligence.

In that regard, it must be stressed that a period of more than five years that has elapsed between the date when an institution was, in normal circumstances, in a position to claim its debt and the date when a debit note is communicated cannot, automatically, mean that there is a breach of the reasonable time principle. It is also appropriate, in the light of the case law to consider whether such a period may be explained by the particular facts of the case. That is why, in the judgment of 13 November 2014 in Nencini v Parliament (C-447/13 P, EU: C:2014:2372), the Court referred to the five-year period with which that paragraph is concerned, not as an upper

limit beyond which the communication by an institution of a debit note to a debtor should, irrespective of the facts of the case, be regarded as necessarily having taken place within an unreasonable period, but in support of the presumption, which is, it may be added, rebuttable. Similarly, the communication of such a debit note within a period that is shorter than those five years, in a case that is less complex, where what is at issue for the person concerned is significant and where the EU institution has not shown due diligence, inter alia as regards the obtaining of supporting documents capable of identifying the claim as being certain, of a fixed amount and due, may not meet the requirements of the reasonable time principle. In such a case, the debtor would bear the burden of proving that a period shorter than five years was unreasonable.

In the present case, by the decision at issue, the Parliament wishes to obtain reimbursement from the appellant of an additional amount which was paid to him based on the parliamentary assistance allowance, over and above the amount already reclaimed by the Secretary-General's decision of 4 March 2009 to claim reimbursement. That additional claim for reimbursement was made following the submission, on 14 October 2011, of the OLAF Report, which indicates that none of the appellant's three assistants carried out the work of a parliamentary assistant. In those circumstances, the Court considers that the Parliament was, in the present case, in a position in normal circumstances to claim its debt, at the date when that report was submitted. Since the debit note at issue was issued by the Parliament on 5 July 2013, the period within which the debit note was communicated to the appellant cannot be regarded as being unreasonable.

Consequently, following the case law, the General Court was correct to find and did not thereby err in law, that the Parliament, in adopting the decision at issue and the debit note at issue, was not in breach of its obligations under the reasonable time principle, in the light of the facts of the case, in particular those relating to the conduct and diligence of the EU institution in its management of the procedure that led to the adoption of that decision and that debit note. In light of the foregoing, the fourth ground of appeal was rejected in its entirety.

Commentary of the Case

There has been some vagueness as to what a 'reasonable period' is in EU law. Is it a general principle of law per se or is it a component of other general principles, such as those of good administration, legal certainty, the protection of legitimate expectations, or the rights of the defence, or is it even a fundamental right? The reasonable period principle is undoubtedly linked intrinsically to the principle of legal and to the right to good administration. It is also a general principle of EU law, recognized as such by the Court of Justice. As such, it forms part of the EU legal order and a breach of it constitutes an infringement of an essential procedural requirement or, at the very least, infringement of the Treaties or "of any rule of law relating to their application, or misuse of powers, within the meaning of the second paragraph of Article 263 TFEU".

The requirement to observe the reasonable period principle currently appears expressly in two articles of the Charter. First of all, Article 41 of the Charter, entitled "Right to good administration", confers on every person 'right to have his or her affairs handled impartially, fairly, and within a reasonable time by the institutions and bodies of the Union. Article 47 of the Charter, concerning the "Right to an effective remedy and a fair trial" states that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. The reasonable period principle has thus been formally incorporated into the right to good administration under EU law.

The title and wording of Article 41 of the Charter, however, put an end to such uncertainty. It is the "right to good administration", a right [which] includes inter alia ... 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, [or] the obligation of the administration to give reasons for its decisions. That formal development is, moreover, no more than the enshrinement of a general principle of law previously recognized by the Court of Justice. According to the explanations relating to the Charter of Fundamental Rights, Article 41 of the Charter is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case-law which enshrined inter alia good administration as a general principle of law. Under Article 52(7) of the Charter, those explanations are to be 'given due regard by the courts of the Union and the Member States.

To finish, where the duration of a procedure is not set by a provision of EU law, the reasonableness" of the period is to be appraised in the light of all of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties to the case. It follows accordingly from that requirement for a specific appraisal that the reasonableness of a period cannot be determined by reference to a precise maximum limit determined abstractly but, rather, must be appraised in the light of the specific circumstances of each case.

Case C-337/15 P[26], 2016 European Ombudsman v Staelen, 2016

Background of the Case

On 14 November 2006, Ms Staelen lodged a complaint with the Ombudsman concerning alleged maladministration by the Parliament in its management of the list of suitable candidates. At the end of that inquiry ('the initial inquiry'), the Ombudsman adopted a decision on 22 October 2007 in which it was concluded that there had been no maladministration on the part of the Parliament. On 29 June 2010, the Ombudsman decided to launch an inquiry on the Ombudsman's own initiative in order to reassess whether there had been any maladministration by the Parliament. On 31 March 2011, the Ombudsman issued a decision closing the own-initiative inquiry and finding, again, that there had been no maladministration in the Parliament's activities.

The position of the Court

Third ground of appeal

By the third ground of appeal, the Ombudsman maintains that, in ruling, in paragraph 269 of the judgment under appeal, that the Ombudsman's failure to respect the fact that Ms Staelen was entitled to receive a reply to her letters within a reasonable period of time constitutes a 'sufficiently serious breach' of a rule of EU law intended to confer rights on individuals, and in concluding, as a result, that the Ombudsman incurs liability if that reasonable period of time is exceeded, the General Court disregarded the distinction that must be made between a mere breach of EU law and one that is 'sufficiently serious' in nature. In so doing, the General Court

[26] **Case C-337/15 P**, Claire v European Ombudsman

failed to fulfil its obligation to take into account all the relevant elements that would enable it to determine that issue. Ms Staelen denies that there was any error of law in that regard.

Commentary of the Case

Having held, in paragraph 256 of the judgment under appeal, that the Ombudsman had, twice, failed to fulfil the obligation to reply to letters from Ms Staelen within a reasonable time, the General Court confined itself, in paragraph 269 of its judgment, to stating simply that, by thus infringing Ms Staelen's right to receive a reply within a reasonable time, the Ombudsman had committed a sufficiently serious breach of a rule of EU law intended to confer rights on individuals which was capable of establishing the liability of the European Union. The General Court thus regarded any breach of the duty to act within a reasonable time as a sufficiently serious breach of a rule of EU law. In so doing, the General Court disregarded the case-law of the Court of Justice referred to in paragraphs 31 to 33 of the present judgment (judgment of 23 March 2004, Ombudsman v Lamberts, C-234/02 P, EU:C:2004:174, paragraph 49 and 52).

Furthermore, the General Court did not give any reasons for the 'sufficiently serious' nature of the breach of EU law which it had previously identified. It should be observed in that regard that the obligation to state the reasons on which decisions of the Court are based arises under Article 36 of the Statute of the Court of Justice of the European Union, which applies to the General Court by virtue of the first paragraph of Article 53 of the Statute, and Article 117 of the Rules of Procedure of the General Court (see, to that effect, judgment of 4 October 2007, Naipes Heraclio Fournier v OHIM, C-311/05 P, not published, EU:C:2007:572, paragraph 51).

It is, moreover, apparent from the settled case-law of the Court that the statement of the reasons on which a judgment is based must clearly and unequivocally disclose the General Court's thinking, so that the persons concerned can be apprised of the justification for the decision taken and the Court of Justice can exercise its power of review (see, in particular, judgment of 20 January 2011, General Química and Others v Commission, C-90/09 P, EU:C:2011:21, paragraph 59).

In the present case, the absence of any statement of reasons to support the characterization of a 'sufficiently serious breach' used by the General Court in paragraph 269 of the judgment under appeal makes it impossible for the Court of Justice to assess whether, as the Ombudsman in essence maintains by her third ground of appeal, the General Court did or did not make an error of law by using that characterization.

That absence of a statement of reasons, which goes to an issue of infringement of essential procedural requirements and thus hinders judicial review by the Court of Justice, involves a matter of public policy which may be raised by the Court of its own motion (see, to that effect, judgments of 20 February 1997, Commission v Daffix, C-166/95 P, EU:C:1997:73, paragraph 24, and of 28 January 2016, Quimitécnica.com and de Mello v Commission, C-415/14 P, not published, EU:C:2016:58, paragraph 57 and the case-law cited).In those circumstances, the Ombudsman's third ground of appeal must be upheld.

As I understand this case, the duty to act in a diligent way hasn't been applied by the European Ombudsman. The duty to act diligently is not an abstract idea. On the contrary, the duty to act diligently is inherent in the principle of good administration and applies generally to the actions of the EU administration in its relations with the public, while requires that administration will act with care and caution. In any event, the notion of good administration must not be confused as tautological of the principle of care. If the duty to act diligently is not protected, then it can give rise to damage claims if violated. The ECJ found that €7000 was a reasonable monetary compensation for the psychological harm that Ms Staelen experienced due to the Ombudsman maladministration to deal with her complaint.

1.4.3 The right to good administration

Case C-521/15[27] Kingdom of Spain v Council of the European Union, 2017

Background of the case

On 30 March 2012, the Kingdom of Spain reported the amount of its planned and actual government deficits for the years 2008 to 2012 to the Statistical Office of the European Union (Eurostat) and provided it with the corresponding data ('the notification of 30 March 2012'). On 17 May 2012, the Kingdom of Spain informed Eurostat that the amount of those deficits should be revised to take account of the fact that certain autonomous communities had incurred more expenditure in the years 2008 to 2011 than that taken into account to establish the amounts disclosed in the framework of the notification of 30 March 2012. That undeclared expenditure amounted to EUR 4.5 billion (that is to say, more than 0.4% of GDP), of which the sum of EUR 1.9 billion (that is to say, nearly 0.2% of GDP) was attributable to the Comunitat Valenciana (Autonomous Community of Valencia, Spain) alone. That information prompted Eurostat to carry out a series of visits to Spain in May, June, September 2012, and September 2013.

On the basis of Article 8(3) of Regulation No 1173/2011, the Commission adopted Decision C (2014) 4856 of 11 July 2014 on the launching of an investigation related to the manipulation of statistics in Spain. On 7 May 2015, the Commission adopted a report in which it concluded that the Kingdom of Spain had misrepresented data relating to its deficit, as referred to in Article 8(1) of Regulation No 1173/2011. More specifically, it took the view that the Kingdom of Spain had been guilty of serious negligence in submitting, in the notification of 30 March 2012, incorrect data relating to the accounts of the Autonomous Community of Valencia even though the Sindicatura de Comptes de la Comunitat Valenciana (Court of Auditors of the Autonomous Community of Valencia, Spain) pointed out each year that the Intervención General de la Generalitat Valenciana (Audit Office of the Autonomous Community of Valencia, Spain) validated accounts containing irregularities connected with a failure to record certain health expenditure and a failure to comply with the accrual principle. On that ground, the Commission recommended that the Council adopt a decision imposing a fine on the Kingdom of Spain.

[27] **Case C-521/15**, Kingdom of Spain v. Council of the European Union,. Judgment of the Court of Justice (Grand Chamber) of 20 December 2017, EU:C:2017:982

On 13 July 2015, the Council adopted the contested decision, in which it concluded that the Kingdom of Spain had been seriously negligent in providing Eurostat with misrepresentations in March 2012 and established the amount of the fine to be imposed upon it. For that purpose, the Council found, first of all, that, in the light of the impact of the misrepresentations at issue, the reference amount for the fine had to be set, following Article 14(2) of Delegated Decision 2012/678, at EUR 94.65 million. It then took the view that that amount should be reduced to take account of various mitigating circumstances, relating in particular to the fact that a single regional authority was responsible for those misrepresentations and the fact that the national statistical authorities had, for their part, cooperated in the investigation.

A fine of EUR 18.93 million was imposed on the Kingdom of Spain for the misrepresentation, due to serious negligence, of government deficit data, as set out in the report of the [Commission] on the investigation related to the manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011. The contested decision was notified to the Kingdom of Spain on 20 July 2015 and then published in the Official Journal of the European Union.

What makes the whole case more fascinating is the fact that Spain replied to four pleas in law, alleging, respectively, that the rights of defence were infringed, that the right to good administration was infringed, that there was no infringement, and that the fine imposed upon it by the Council is disproportionate. For our investigation regarding the good administration, we are interested in the second plea.

Presentation of the second plea: infringement of the right to good administration

Arguments of the parties

The Kingdom of Spain contends that the contested decision infringes the right to good administration, enshrined in Article 41(1) of the Charter of Fundamental Rights of the European Union (‘the Charter’). It is incompatible with the requirement of objective impartiality inherent in that right for the Commission to entrust the conduct of an investigation procedure founded on Article 8(3) of Regulation No 1173/2011 to persons who previously took part in the visits that led the Commission to take the view that there were serious indications of facts justifying the initiation of such a procedure. In the present case, three of the fourteen members of staff who took part in the visits carried out by Eurostat in Spain, before the decision to launch the

investigation was adopted, also formed part of the four-person team which was subsequently set to work by the Commission in the context of the investigation procedure.

Furthermore, the department to which those three persons belong, namely Eurostat, presents a risk of partiality since it is responsible for assessing the debt and deficit data submitted by the Member States and therefore has an interest that an investigation procedure is conducted against the Member State which is alleged to have manipulated such data. Accordingly, it should be concluded that the investigation procedure was conducted under conditions that did not guarantee the Commission's objective impartiality and that that infringement of the right to good administration renders the contested decision, adopted by the Council at the end of that procedure, unlawful.

While submitting that the Kingdom of Spain cannot invoke Article 41(1) of the Charter as it is a Member State and not a person within the meaning of that provision, the Council, supported by the Commission, agrees that the Kingdom of Spain can rely upon the principle of good administration as a general principle of EU law. That said, the fact that the Commission entrusts the conduct of an investigation procedure initiated under Regulation No 1173/2011 to members of staff who previously took part in visits organized based on Regulation No 479/2009 does not breach that principle, since the two procedural frameworks at issue are legally different. That is particularly the case as, at the end of such an investigation procedure, it is an institution other than the Commission, namely the Council, which is called upon to adopt a decision concerning the existence of manipulation of the statistics and to impose a fine on the Member State concerned.

Position of the Court

Article 41(1) of the Charter, which is headed 'Right to good administration' forms part of Title V of the Charter, which is headed 'Citizens' rights', provides in particular that every person has the right to have his or her affairs handled impartially by the institutions of the European Union. In the present case, it is a Member State that relies upon that provision. Without adopting a position as to whether a Member State may be regarded as or equated with a 'person' within the meaning of that provision, and can on that basis rely on the right that it lays down, which the Council and the Commission dispute, it should be pointed out that that right reflects a general principle of EU law (judgment of 8 May 2014, *N.*, C-604/12, EU: C:2014:302, paragraph 49),

which may be relied upon by the Member States and in the light of which the contested decision should therefore be assessed.

Indeed, it is clear from the Court's case law that the EU institutions are required to observe that general principle of law in the context of administrative procedures that are initiated against the Member States and are liable to result in decisions adversely affecting them (see, to that effect, judgments of 15 July 2004, *Spain* v *Commission*, C-501/00, EU: C:2004:438, paragraph 52, and of 24 June 2015, *Germany* v *Commission*, C-549/12 P and C-54/13 P, EU: C:2015:412, paragraph 89 and the case-law cited). In particular, it is incumbent upon the EU institutions to comply with both components of the requirement of impartiality, which are, first, subjective impartiality, by which no member of the institution concerned may show bias or personal prejudice, and second, objective impartiality, under which there must be sufficient guarantees to exclude any legitimate doubt as to possible bias on the part of the institution concerned (judgment of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU: C:2013:513, paragraphs 154 and 155 and the case-law cited).

In the present case, whilst the Kingdom of Spain does not call the Commission's subjective impartiality into question, it contends, on the other hand, that the contested decision is unlawful on the ground that the Commission breached the requirement of objective impartiality by entrusting the conduct of the investigation procedure to a team largely composed of members of Eurostat's staff who had already taken part in the visits organized by Eurostat in Spain before that procedure was initiated. First of all, it must be pointed out that, as the Kingdom of Spain rightly submits, the Council and the Commission are not justified in asserting that such a line of argument must be rejected on the ground that it is the Council, and not the Commission, that adopted the contested decision at the end of the investigation procedure.

In the light of the Court's case-law of the present judgment, it must be held that where several EU institutions are given separate responsibilities of their own in the context of a procedure initiated against a Member State that is liable to result in a decision adversely affecting it, each of those institutions is required, in respect of its activities, to comply with the requirement of objective impartiality. Even where only one of them has breached that requirement, such a breach is liable to render the decision adopted by the other at the end of the procedure at issue unlawful. Consequently, it is incumbent upon the Court to determine whether there are sufficient guarantees to exclude any legitimate doubt as to possible bias on the part of the Commission where it entrusts the conduct of an investigation procedure such as that which resulted in the contested decision to a team largely composed of members of Eurostat's staff who had already

taken part in visits organized by Eurostat in the Member State concerned before that procedure was initiated.

In that regard, it must be stated that those visits, on the one hand, and that investigation procedure, on the other, fall within separate legal frameworks and have different purposes. The visits that Eurostat may carry out in the Member States, based on Articles 11 and 11a of Regulation No 479/2009, have the purpose of enabling that Commission department to assess, following Article 8(1) of that regulation, the quality of the government debt and deficit data reported twice a year by the Member States, as is apparent from paragraphs 72 and 75 of the present judgment. The investigation procedure is governed by Article 8(3) of Regulation No 1173/2011 and has the purpose, following that provision, of enabling the Commission to conduct all investigations necessary to establish the existence of misrepresentations of that data, made either intentionally or by serious negligence, where it finds that there are serious indications of the existence of facts liable to constitute such a misrepresentation.

In the light of those separate legal frameworks and different purposes, it must be held that, even though the data which is the subject of, first, those visits and, second, that investigation procedure may partially coincide, the assessments which Eurostat and the Commission are respectively called upon to make in respect of that data are, on the other hand, necessarily different. Consequently, the assessments made by Eurostat as to the quality of some of that data, following the visits made in a Member State, do not, in themselves, prejudge the view that might be taken by the Commission regarding the existence of misrepresentations relating to the same data should it subsequently decide to initiate an investigation procedure in that regard.

It follows that the fact that the conduct of an investigation procedure founded on Article 8(1) of Regulation No 1173/2011 is entrusted to a team largely composed of members of Eurostat's staff who have already taken part in visits organized by Eurostat in the Member State concerned based on Regulation No 479/2009, before the institution of that procedure, does not, as such, permit the Court to conclude that the decision adopted at the end of that procedure is unlawful on account of a breach of the requirement of objective impartiality to which the Commission is subject.

Furthermore, it should be noted, first, that it is not to Eurostat, whose responsibilities are clearly defined by Regulation No 479/2009, as has been set out in paragraph 72 of the present judgment, but to the Commission, and therefore to the Commissioners acting as a collegiate body, that Article 8(3) of Regulation No 1173/2011 reserves (i) the power to decide to initiate the investigation procedure, (ii) responsibility for conducting the investigation and (iii) the power

to submit to the Council the recommendations and proposals that are necessary after the investigation. Second, Regulation No 1173/2011 does not entrust Eurostat's staff with any responsibility of their own in the conduct of the investigation procedure. Accordingly, the role assigned to Eurostat's staff in the investigation procedure cannot be regarded as decisive for either the conduct or the outcome of that procedure.

It follows from the foregoing considerations that the fact that the conduct of the investigation procedure was entrusted to a team largely composed of members of Eurostat's staff who had already taken part in visits organized by Eurostat in Spain before that procedure was initiated, cannot be regarded as vitiating the contested decision on account of an alleged breach by the Commission of the requirement of objective impartiality. Therefore, the second plea was considered unfounded.

Commentary of the Case

During this legal confrontation, Spain took the position that even though it is a Member State of the EU, in reality, it is a "person", as stated in article 41(1) of the Charter. As I understand it, this stance was a clear manipulation of the right because a country cannot take the form of a single person (individual or a legal entity). Furthermore, the country tried to create further confusion since on purpose mixed two different legal frameworks: the Eurostat visits a member state and its obligation to inform Eurostat about its public debt and deficit with the correct data to establish a case where good administration was breached. What is more is that those visits made by Eurostat's officials took place before the conduct of the investigation procedure regarding the quality of the statistical data. A parallel dimension is that countries as big as Spain made an effort to avoid their commitments not only to the European institutions but also to other Member-States of the Union by violating the rules of the Stability and Growth Pact. This is an unacceptable and to a great extent unethical act because the European Union is based on the rule of law, which signifies that everything the EU does is founded on voluntarily and democratically agreed treaties by its member countries.

Finally, another very attention-grabbing argument is made by Papadopoulou, (2017, p.292):

the imposition of a fine is a new tool of a Union nature that is placed at the start of the processes of coordination of national economic policies and serves the goal of prevention. Prevention should mean both the mechanism of multilateral supervision and that of fiscal

discipline, which are now part of a single philosophy to prevent fiscal derailments by the member states.

To put it as simply as possible, the fine that was imposed on Spain should not be perceived as punitive.

Case C-230/18[28] REQUEST for a preliminary ruling under Article 267 TFEU from the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol, Austria), made by decision of 27 March 2018, received at the Court on 30 March 2018, in the proceedings, 2019

Background of the Case

PI, a Bulgarian national, conducted a massage business based on a business license issued on 9 February 2011 by the Stadtmagistrat Innsbruck (Municipal Administration, Innsbruck, Austria). She ran a massage salon located in that city. On 12 December 2017, two police officers of the State Police Department conducted a check in PI's massage salon. Those officials believed that, in that salon, sexual services, namely naked massages and erotic massages, were being offered to clients and therefore decided, at approximately 20.30 on that same day, to close that salon based on suspicion of infringement of Paragraph 19(2) of the Police Law ('the decision of 12 December 2017'). Consequently, official seals were affixed to the salon in question.

PI was verbally informed of that decision immediately before the closure of the salon. She was not issued confirmation of that closure, nor did she receive any documents setting out the reasons for the adoption of that decision. On 13 December 2017, PI instructed a lawyer to safeguard her interests and, on several occasions over the days that followed, that lawyer attempted to gain access to the police file. However, access was refused on the ground that, in the case of administrative measures such as those that PI was subject to; access to files was not permissible since no criminal proceedings had been initiated against her.

On 14 December 2017, PI sought annulment of the decision of 12 December 2017, and, on 29 December 2017, the State Police Department decided to grant that request. The decision adopted by that administrative authority did not contain a statement of reasons concerning the closure or set out the grounds for the annulment of the decision of 12 December 2017. On 18 December 2017, PI brought an action before the referring court, the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol, Austria), seeking a declaration that the closure of

[28] **Case C-230/18** (Judgment of the Court (Sixth Chamber) (request for a preliminary ruling from the Landesverwaltungsgericht Tirol — Austria) — PI v Landespolizeidirektion Tiro 2019/C 230/17)

her massage salon was unlawful. The State Police Department failed to communicate to the referring court the documents and facts relevant to the case; therefore, the court itself proceeded to establish those facts.

That court notes that according to national legislation, a decision regarding the closure of a commercial enterprise, such as PI's massage salon, is legally effective upon its adoption. It states that, in so far as the objective of that legislation is to combat illegal prostitution, competent authorities must be able to adopt measures in the exercise of their direct authority and coercive power. Such a decision may be annulled, at the request of the person concerned, by either the administrative authority, in this instance the State Police Department, with pro futuro effect, or by a court, in this instance the referring court, which may review the lawfulness of that decision.

However, unlike in other national procedures involving the exercise, by the authorities, of their direct authority and coercive power, the legislation governing the procedure at issue in the main proceedings does not require that those authorities, following the exercise of such power, justify their decision in writing. The obligation to provide a written statement of reasons for a decision taken in the exercise of that power is intended to compel the authority concerned to reassess the legality of its intervention.

The referring court considers that in the absence of a written document setting out the reasons for the decision adopted by the competent authority in the context of a procedure such as that at issue in the main proceedings, the addressee of such a decision is deprived of the possibility of accessing the file relating to his case, seeing the evidence collected by that authority and expressing his views in that regard. It is only indirectly, in an action brought against the measures taken by that authority, which the addressee can learn of the reasons why the authority suspected that an illegal act had been committed. Furthermore, the possibilities available to challenge the relevant decision are insufficient.

Pursuant to Paragraph 19a (4) of the Police Law, the competent authority may only annul its decision concerning the closure of the establishment in question in two situations, namely where the addressee of that decision can produce an authorization to operate a brothel or can ensure that the business of the brothel will not be resumed after the annulment of the closure decision. However, as regards the decision of 12 December 2017, the referring court is not entitled to review the merits of the facts that led to the adoption of the decision since that court is only competent to assess whether a police officer had, in that instance, reasonable grounds for suspecting illegal activity.

In those circumstances, the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

(1) Is Article 15(2) of the [Charter] to be understood as precluding legislation of a Member State which, as in the case of paragraph 19[a](3) [of the Police Law], makes it possible for bodies of authority, even without a prior administrative procedure, to be able to take measures of direct authority and coercive power, such as, in particular, the on-the-spot closure of a business establishment, without these merely being interim measures?

(2) From the perspective of equality of arms and the perspective of an effective legal remedy, is Article 47 of the Charter, potentially in conjunction with Articles 41 and 52 thereof, to be understood as precluding legislation of a Member State which, as laid down in Paragraph 19[a](3) and (4) [of the Police Law], provides for de facto measures of direct authority and coercive power, such as, in particular, closures of business establishments, without documentation and without confirming the person concerned?

(3) From the perspective of equality of arms, is Article 47 of the Charter, potentially in conjunction with Articles 41 and 52 thereof, to be understood as precluding legislation of a Member State which, to annul de facto measures of direct authority and coercive power, such as, in particular, closures of business establishments, requires a substantiated application to lift that closure from the person affected by those de facto measures, as laid down in paragraph 19[a](3) and (4) [of the Police Law]?

(4) From the perspective of an effective legal remedy, is Article 47 of the Charter, in conjunction with Article 52 thereof, to be understood as precluding legislation of a Member State which, as in the case of paragraph 19[a](4) [of the Police Law], allows only for a right to apply for annulment that is restricted to specific conditions in the case of a de facto coercive measure in the form of the closure of a business establishment?

Position of the Court

In those circumstances, the questions referred to must be answered in the light of Article 49 TFEU and not Directive 2006/123. Article 15(2) of the Charter, which is referred to in the first question, recognizes the freedom of every citizen of the Union to exercise the right of establishment and to provide services in any Member State. It is clear from the explanations relating to the Charter, which, following the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, must be taken into consideration to interpret it, that Article 15(2) of the

Charter deals with the three freedoms guaranteed by Articles 26, 45, 49 and 56 TFEU, namely, the free movement of workers, freedom of establishment and freedom to provide services.

In that regard, it should be noted that even though the referring court does not refer, in its request for a preliminary ruling, to Article 16 of the Charter, it is clear from the case law of the Court that that provision refers, inter alia, to Article 49 TFEU, which guarantees the fundamental freedom of establishment (see, to that effect, the judgment of 13 February 2014, Sokoll-Seebacher, C-367/12, EU: C:2014:68, paragraph 22). Consequently, referring, concerning the freedom of establishment, to Article 15(2) of the Charter, necessarily requires, in the context of the main proceedings, an assessment of compliance with that freedom in the light of Article 16 of the Charter.

As regards Article 41 of the Charter, which is referred to in the second and third questions, it must be observed that it is clear from the wording of that provision that it is addressed not to the Member States but solely to the institutions, bodies, offices, and agencies of the European Union (judgment of 13 September 2018, UBS Europe and Others, C-358/16, EU: C:2018:715, paragraph 28 and the case-law cited). It follows that Article 41 of the Charter is irrelevant to the case in the main proceedings.

Nevertheless, that provision reflects a general principle of EU law to the effect that the right to good administration encompasses the obligation of the administration to give reasons for its decisions (see, to that effect, the judgment of 17 July 2014, YS and Others, C-141/12 and C-372/12, EU: C:2014:2081, paragraph 68). The obligation of the administration to state reasons for a decision that is sufficiently specific and concrete to allow the person concerned to understand the grounds of the individual measure adversely affecting him is thus a corollary of the principle of respect for the rights of the defence, which is a general principle of EU law (see, to that effect, judgments of 22 November 2012, M., C-277/11, EU: C:2012:744, paragraph 88, and of 11 December 2014, Boudjlida, C-249/13, EU: C:2014:2431, paragraph 38).

It, therefore, follows from the foregoing considerations that the answer to the questions referred to is that Article 49 TFEU, Article 15(2), and Articles 16, 47, and 52 of the Charter and the general principle of the right to good administration must be interpreted, in circumstances such as those at issue in the main proceedings, as precluding national legislation providing that an administrative authority may decide to close a commercial establishment with immediate effect, on the ground that it suspects that prostitution is practiced in that establishment without the authorization required under that legislation, in so far as that legislation, first, does not require reasons, in fact, and law, to be given in writing for such a decision and to be

communicated to its addressee, and second, requires that any application brought by that addressee and seeking annulment of that decision must be reasoned.

Commentary of the Case

The administration should provide reasons for its actions, and for the right to good administration to be secured in line with article 41 of the Charter. As we saw, the Police implemented the national law. The actions of the Police weren't disproportionate in the light of the objectives pursued by such a law, namely preventing the commission of criminal offenses against persons who engage in prostitution and the protection of public health without having the authorization for such activities. What makes the difference here is the immediate nature of that decision and also the fact that it concerns an illegal activity, so reasons were not required to be given in a written form.

Conclusion

This thesis highlighted the practical importance of applying good administration while showed the transition of this legal term from a principle to a fundamental right in the EU legal order. Good administration, on one hand, guaranteed the compliance of the administrative procedure with certain standards and on the other hand, it constitutes an obstacle to the misconduct of those administrative bodies. Based on the analysis of the current thesis, there is hardly any doubt that good administration is an "umbrella term" that reflects always certain societal needs.

For several national legal frameworks as the one of Greece, good administration is a principle, while for the EU legal framework it is a right. However, before the validation of the EU Charter of Fundamental Rights, good administration was limited to the status of a principle, while elements of this principle had the form of a right in the Treaties such as the right to be heard. Back then the principle of good administration was related to the Competition law and more broadly the economic dimension of the Union while "was considered, on demand of some private parties to the European Court of Justice, in order to claim for damages against the European Administration" (Lanza, 2008, p.479). Also, at that time, good administration was confused with "diligence" and other similar terms like the "duty of care".

Today, at the European level, good administration is a fundamental, procedural, subjective right of defence, with a moral constituent as well. The right to good administration is found in a wide array of legal cases, a clear indication of its high importance and its consolidation in the legal framework. Looking closer at the rights listed under Article 41 CFR, it becomes obvious that this provision aids in the establishment of minimum protection of certain elements, which are embedded in the case law of the European courts as principles of good administration and rights of defence. In addition, if the fundamental right of good administration is infringed by the administration, this doesn't mean that the European courts will decide necessarily the annulment of the administrative decision, if the outcome would have been the same, according to the judge. So a fundamental right doesn't automatically cause consequences, as we noticed in the explored cases. Everything is going to be decided by the judge and the case he has before him for reaching to a decision.

What needs to be remembered is that human rights have the tendency to shift continuously: "human rights revolution is by definition ongoing" (Hunt 2007, p. 29) but despite this situation, one thing remains unchangeable, the idea of human dignity. Human dignity is also used in legal

documents either as a right or a principle, similarly to the term of good administration. There is an ocean of views on the contested issue of human dignity and this is not the right place to be developed. However, there are those (including myself) who understand human dignity as not:

> as a synonym for human rights but rather as expressing a value unique to itself, on which human rights are built. It is this thicker view that appears to be at work in the judicial decisions… In this thicker use, the role that dignity plays is primarily to help in the identification of a catalogue of specific rights. This catalogue is not closed, however, and the general principle may continue to generate more rights over time as its implications are better understood or changes occur which give rise to new situations that require the application of the general principle for the first time. More generally, however, dignity becomes an interpretive principle to assist the further explication of the catalogue of rights generated by the principle. Some (or all) of the rights then come to be seen as best interpreted through the lens of dignity. (McCrudden, 2008. p.681).

As we can see from this passage, article 41 of the EU Charter of Fundamental Rights represents an excellent example of this particular implementation of human dignity by including an open list of specific rights open to change and enrichment. After all, we should be open-minded to definitions because definitions are not 'written in stone' but are based on human experience. What matters for any judicial system is to stand close to the citizens and develop the right legal tools to ensure good administration and enhance the realization of dignity because citizens must be seen as 'equal partners' in the administrative dealings. At least this should be the mandate of every modern public administration of the 21th century.

In this context, Greece could probably imitate the example of the EU legal order by turning good administration from a principle to a right in order to put a break on the maladministration, which is a typical pathogeny of the Greek public services. In that way, Greek judges would have the opportunity to evoke frequently the legal term of good administration since it would be an established right and to ask for its implementation in the relevant cases. This suggestion represents a food for thought for academia and lawyers.

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