

PUBLIC LAW

THE RIGHT TO GOOD ADMINISTRATION – IS THE CONSTITUTIONAL REGULATION NECESSARY?*

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Abstract: *The constitutional revision from 2003 enriched the patrimony of the fundamental rights and freedoms of Romanian citizens with three such rights and freedoms: the right to a healthy environment, economic freedom and access to culture. More than 16 years after this revision, but also as a member state of the European Union, we consider as an opportunity and necessity, at the same time, a new revision of our fundamental law, a consistent one at this moment, which should take into consideration the consecration of other rights, even by designing the necessary constitutional framework for ensuring and respecting a good administration. Analysing the constitutional provisions of other states, as well as those of the European level, the relevant doctrine and jurisprudence, using research methods such as multidisciplinary, comparative, sociological, empirical or systemic, it will be possible for us to conclude that good administration is one of those indefinite or determinable legal concepts. Being such a concept it is necessary to identify elements that allow us to configure it, elements that we should find in a unitary text in an article of our fundamental law, and through which the right to good administration would be enshrined. Therefore, we appreciate that in a state where the public administration, exercising of its functions and attributions, also had delicate moments in ensuring a good and efficient administration, the consecration of the right to good administration, by exhaustively capturing, as far as possible, the elements the definers of the concept of good administration, is a natural consequence of the constitutional recognition of the rule of law.*

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Introduction

According to the Explanatory Dictionary of the Romanian language, “to govern”¹ means to lead a state, but also the verb “to administer”² is explained by

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the same term, namely to lead, but not a state, but institutions or businesses. Just from these basic definitions of the two mentioned words, it can be created confusion if we consider that “to govern” is synonymous with “to administrate”. But, as Venice Commission has shown in *Stocktaking on the notions of “good governance” and “good administration”*, „the concept of good governance developed by the World Bank has been end or set by a range of other international actors and organisations, which have often adapted it to their own needs”³ and many attempts have been made by international organisations or national authorities to modify it with a view to include democratic elements⁴. Thus, it is considered „the concept of good governance does not find its origin in the constitutional or legal discourses, being rather a non-legal concept”⁵. On the contrary, it is stated that good administration is included in good governance, as an important dimension of that concept, and also it is „widely accepted that good administration is a legal concept in itself, which is enshrined in international documents as well as in the legal order of several states”⁶.

Therefore, first of all we have to differentiate between these two concepts - good governance and good administration, concepts that are an important part of the vocabulary used by the persons who governs us, even when is set up the constitutional and legal framework for organization and functioning of the public administration.

The doctrine considers that good governance, but even good administration are indefinite legal concepts⁷, concepts whose content cannot be accurately determined and for this reason it is impossible to formulate a precise and clear definition for these two concepts. We have to take into consideration when we are trying to determine the content of these concepts that even their content differs depending on the social-political reality which we are referring to, but also on the political regime of that state, and this is the situation just if we only refer to the perception of these concepts at national level. However, such an approach would be limited and inadequate in the current reality, it is important to remember that

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¹ See in this regard, *The explanatory dictionary of the Romanian language*, on-line version, available on: <https://dexonline.ro/definitie/guverna>.

² *Idem*, available on: <https://dexonline.ro/definitie/administra>.

³ European Commission for Democracy through Law (Venice Commission), *Stocktaking on the notions of “good governance” and “good administration”*, Study no. 470 / 2008, CDL-AD(2011)009, Strasbourg, 8 April 2011, p. 4, available on: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)009-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)009-e).

⁴ See, European Commission for Democracy through Law (Venice Commission), *Stocktaking on the notions of “good governance” and “good administration”*, *op. cit.*, p. 4.

⁵ *Ibidem*.

⁶ *Ibidem*.

⁷ D. Apostol Tofan, *Administrative Law*, tome I, forth edition, Bucharest: C.H. Beck, 2018, p. 12.

these concepts have been developed at the level of international and / or regional bodies, organizations or institutions, as the case may be. Therefore, we will try to identify the main elements, the defining ones for these concepts so that, based on our constitutional regulations, especially, but also on legal ones, to be possible for us to justify our answer to the question regarding the necessity of constitutional regulation of the right to good administration.

We decided to discuss about good governance, but in this work, especially about good administration, because this is what each of us wants to be assured by today's governors to limit their powers and attributions which, sometimes even with our approval, which they have assigned, including by the constitution of a state to ensure the government of the state. We can observe such inclinations especially among the important central authorities within the executive power, such as the head of state, especially when this position is held by a president of the republic, or the government. In this regard, we appreciate that the most eloquent example of our constitutional system it is represented by the constitutional provisions of the emergency ordinances and the excessive appetite⁸ of our Government to use them to regulate in the most diverse areas, seriously undermining the exclusive attribution of the Parliament to adopt normative acts in the law field.

But, today's citizens increasingly demand, sometimes even through less peaceful forms, respect for their rights, our leaders are asked imperatively to not forget that the power in any democratic state it belongs to the people, and they – our leaders have just specific powers and attributions, constitutionally and legally established, to exercise this power, but only for the benefit of the people who empowered the leaders to do so.

1. Good governance and good administration - different legal concepts

We have already mentioned that these two concepts are legal ones, good administration being a dimension of good governance. In our contemporary period⁹, in the context of developing another concept and mechanisms for practical

⁸ From the Activity Report of the Legislative Council, Chapter IV-The official evidence of the Romanian legislation-Directory of Romanian legislation-The issuance of the normative acts in execution, report from 2017, we notice that the number of these emergency ordinances of the Government (GEO) was of 117 compared to 278 laws adopted by the Parliament, of which almost half were laws by which they were adopted or rejected including the GEO. Also, from the activity report for the year 2018, we note that the number of these GEOs was 114 compared to the 363 laws adopted by the Parliament, of which almost one third were laws which were adopted or rejected including the GEO. (These activity reports are available on: <http://www.clr.ro/InfoPublic/rapActiv.aspx>).

⁹ This does not mean that about the concept of governance was discussed only in the contemporary period, on the contrary various aspects regarding the governance, its elements, what its implementation implies so that we can talk about good governance, for example, have been analysed by "researchers" from various fields, from philosophy to law, politics, sociology, economics,

implementation sustainable development¹⁰, it has been discussed, mainly by international financial institutions, such as the World Bank, about governance¹¹ and good governance, about what they imply, what is the content of these concepts. Regarding the concept of good administration, the doctrine appreciates that a first definition of it was outlined by the Council of Ministers, the decision-making body of the Council of Europe¹² departing from a real necessity determined by different aspects such as the fact that: „the public authorities play a key role in democratic societies; that they are active in numerous spheres; that their activities affect private persons’ rights and interests; that national legislation and various international instruments, particularly those of the Council of Europe, offer these persons certain rights with regard to the administration; and that the European Court of Human Rights has applied the Convention for the Protection of Human Rights and Fundamental Freedoms to the protection of private persons in their relations with the administration”¹³. We have to point out that even the Committee of Ministers of the Council of underlined that „good administration is an aspect of good governance; that it is not just concerned with legal arrangements”¹⁴, and which involves many other elements that contribute to the definition of the concept of good administration.

Therefore, governance and good governance are concepts that take into account the decision-making side of the specific activities of exercising power by

management”. See, also for some details, E. Slabu, *Good administration in the European administrative space*, Bucharest: C.H. Beck, 2018, p. 21.

¹⁰ Discussing about the concept of good governance for sustainable development, an author pointed out that, in this case, good governance „should ensure achievement of a sustainable economy, which provides prosperity and opportunities for all; accomplishment of a strong, healthy and just society meeting the diverse needs of the stakeholders; and sustainable use of the resources within the environmental limits”, and it is also very important to promote „effective, participative systems of governance focused on engaging citizens’ creativity, energy and diversity is also an objective of the good governance”. See, S. Mojsavska, *Towards good governance for sustainable development in Macedonia*, Economic Development no. 1-2/2009, p. 88, available on: <https://www.ceeol.com/search/article-detail?id=209078>.

¹¹ An author pointed out a real truth about the concept of governance, namely that this concept is not a new one, it is as old as human civilization. When you are explaining this concept as simple as he has done, it is obviously that he is right. Thus, he states that „simply put "governance" means: the process of decision-making and the process by which decisions are implemented (or not implemented)”. See, Y. K. Sheng, *What is good governance*, United Nations Economic and Social Commission for Asia and the Pacific, available on: <https://www.unescap.org/sites/default/files/good-governance.pdf>.

¹² E. Slabu, *Good administration in the European administrative space*, op. cit., p. 23.

¹³ See point no. 13 of the Preamble of *Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration*, adopted by the Committee of Ministers on 20 June 2007 at the 999bis meeting of the Ministers’ Deputies, this recommendation is available on: <https://rm.coe.int/16807096b9>.

¹⁴ See point no. 19 of the Preamble from the same *Recommendation CM/Rec(2007)7* of the Committee of Ministers to member states on good administration.

the rulers, by the decisions took by them, this way being outline the guidelines for the development of a state, but also how it will be achieved the leadership of that state. On a contrary, administration and good administration are about the methods in which public authorities, especially those in the sphere of public administration, put into practice these leading ideas.

1.1. Good government

Good governance is seen as a concept that is "embedded in the more general principles of the rule of law", nowadays being "considered universal" which should mean that it must "be applied globally"¹⁵. Good governance has to "define the responsibility and effectiveness of governmental activity, but also the fight against corruption and political clientelism"¹⁶. By outlining what this concept should take into consideration, we could agree to identify so succinctly the content of good governance. However, we consider that both governance and good governance have a broader content.

Thus, governance should mean „the functioning of institutions that should have social legitimacy and work effectively and responsibly, the capacity of societies to create a system of representations, institutions, and intermediary structures geared to achieving the objectives set out above"¹⁷, but also „the way of social coordination or social order"¹⁸. Another author points out that „governance refers not only to relations between individuals, but also to political and power structures"¹⁹. In another opinion, it is shown that „by and large, the term “Governance” has become a more or less neutral concept that focuses on steering mechanisms in a certain political unit, emphasizing the interaction of State (First), Business (Second), and Society (Third Sector) players"²⁰. Another author²¹ appreciates that when most international organisations provides definition of good governance, actually they are referring to governance „outlining three aspects of it: i) the type of the political regime, ii) the public management of economic and social

¹⁵ D.C. Dragoş, B. Neamţu, coordinators, *Ombudsman Institution: Alternative Justice?*, Bucharest: C.H. Beck, 2011, p. XIX.

¹⁶ E. Slabu, *Good administration in the European administrative space*, *op. cit.*, p. 22.

¹⁷ M. Zakrzewska, *The role of social participation in the concept of good governance - a theoretical approach*, Public Policy and Administration no. 4/2017, p. 530, available on: <https://www.ceeol.com/search/article-detail?id=608138>.

¹⁸ R. Maynz, *New Challenges In Governance Theory*, European University Institute. Jean Monnet Chair Paper RSC, 1998, quoted by M. Zakrzewska, *op. cit.*, p. 530.

¹⁹ J. Newman, *Modernising Governance*. New Labour, Policy and Society, Sage, 2000, quoted by M. Zakrzewska, *op. cit.*, p. 530.

²⁰ W. Drechsler, *Governance, good governance, and government: The case for Estonian administrative capacity*, TRAMES no. 4/2204, p. 388, available on: <https://www.ceeol.com/search/article-detail?id=201280>.

²¹ S. Ladi, *Good governance and public administration reform in the Black Sea economic cooperation (BSEC) member states*, Athens: International Centre for Black Sea Studies, Xenophon Paper no. 6, p. 11, available on: http://icbss.org/media/110_original.pdf.

resources, and iii) the capacity of government to design, formulate and implement policies”²².

Therefore, identifying the content of the concept of governance is a complex process, which differs from author to author, depending on how each author approaches this concept. It is a certainty that government is referring to the functioning of the state institutions, respecting principles such as legality, efficiency, effectiveness, but also to the settlement of objective procedures and mechanisms for the designation of these institutions so that the relationships between individuals, between individuals and these institutions, but also between these institutions can be optimally realized. The way the state government will be understood is related to the type of political regime, public management and human resources, but also to the ability of rulers to configure and implement various policies needed in a state dominated by the rule of law, such as the respect of fundamental rights and freedoms, the independence of justice or the principle of separation and balance of powers in a state.

Unlike the term of governance, good governance „is mainly a political and technocratic term without normative aspirations and suggests that governance should be “good” and not “bad”²³, which „has acquired the characteristics of a “container concept”, which incorporates a variety of principles and is as general as concepts such as globalisation or global governance”²⁴. Good governance is such a concept because the areas of interest are numerous: “universal protection of human rights non-discriminatory laws; efficient, impartial and rapid judicial processes; transparent public agencies; accountability for decisions by public officials; devolution of resources and decision making to local levels from the capital; and meaningful participation by citizens in debating public policies and choices”²⁵. If we are considering that the good governance is related to sustainable development then our „container concept” „should ensure achievement of a sustainable economy, which provides prosperity and opportunities for all; accomplishment of a strong, healthy and just society meeting the diverse needs of the stakeholders; and sustainable use of the resources within the environmental limits”²⁶.

It is obviously that good governance also has a wide content, almost impossible to identify in its entirety, which takes into consideration all aspects of the life of a society, a state, or an international organization, which could be modified depending on the changes that occur in the social reality.

²² S. Ladi, *op. cit.*, p. 11, quoting World Bank, *Governance: The World Bank’s Experience* (Washington D.C.: The World Bank, 1994).

²³ S. Ladi, *op. cit.*, p. 11.

²⁴ *Ibidem*.

²⁵ T. G. Weiss, *Governance, Good Governance and Global Governance: Conceptual and Actual Challenges*, *Third World Quarterly* 21, no. 5 (2000), p. 801, quoted by S. Ladi, *op. cit.*, p. 11.

²⁶ S. Mojsavska, *op. cit.*, p. 88.

Because „good governance is a product of time and the individual historical, political and economic conditions of each country have to be taken into account when reforms are prioritised”²⁷, it would be advisable to identify several defining elements that must be veritable constants on the basis of which the concept of good governance can be identified. Besides, this is the way used by different international organizations to identify the content and the meaning of good governance, and in our opinion it is more accurate to proceed like this to create a framework for identifying this concept. So, for example, the World Bank is identifying such defining elements as: public sector management, accountability, legal framework for development, and transparency and information, but also military expenditure and human rights²⁸. OSCE underlines that it is possible to identify a good governance when „a public sector [is] based on integrity, openness, transparency, accountability and rule of law as being a major factor of sustainable economic growth, and recognize that such a public sector constitutes an important element for fostering citizens’ trust in public institutions and government”²⁹. In a document from the European Commission there are identified five principles which underpin good governance: openness, participation, accountability, effectiveness and coherence³⁰. It is also mentioned that the application of these five principles reinforces those of proportionality and subsidiarity³¹.

1.2. Good administration

We already know that the rule of law also includes respect for fundamental rights and freedoms. But, the public administration, by its authorities and institutions, exercising honestly and properly their powers, is obliged to respect the rights and duties of each individual, if not even to contribute to their

²⁷ S. Ladi, *op. cit.*, p. 12. Another author considers that: „Good enough governance, as a concept, suggests that not all governance deficits need to (or can) be tackled at once, and that institution- and capacity-building are products of time; governance achievements can also be reversed. Good enough governance means that interventions thought to contribute to the ends of economic and political development need to be questioned, prioritised, and made relevant to the conditions of individual countries. They need to be assessed in the light of historical evidence, sequence, and timing, and they should be selected carefully in terms of their contributions to particular ends such as poverty reduction and democracy”. See M. S. Grindle, *Good Enough Governance Revisited*, Development Policy Review 25, no. 5/2007, p. 554, available on: http://courses.washington.edu/pbaf531/Grindle_GoodEnoughGovRevisited.pdf.

²⁸ Governance. The World Bank’s Experience, a World Bank Publication, USA, 1994, p. XIII, available on: <http://documents.worldbank.org/curated/en/711471468765285964/pdf/multi0page.pdf>.

²⁹ OSCE, Ministerial Council, *Declaration on strengthening good governance and combating corruption, money-laundering and the financing of terrorism*, MC.DOC/2/12, Dublin, 2012, available on: <https://www.osce.org/cio/97968?download=true>.

³⁰ Commission of European Communities, *European Governance. A White Paper*, COM(2001) 428 final, Bruxelles, 2001, available on: https://ec.europa.eu/europeaid/european-governance-white-paper_en.

³¹ *Ibidem*.

fulfillment in accordance and within the limits of their competence. To administrate a community should be the main mission of any structure from the public administration structure – even if we are talking about public authority or public institution. And in order to talk about good administration or not, we could see whether "the fundamental rights of the governed ones are respected by the rulers, as in any state that recognizes and applies the rule of law"³², but also "if the proper functioning of the public administration is ensured," with respect to clear, predictable, known legal provisions, known"³³ by the governed ones, but also and by the rulers civil servants.

Like good governance, whose dimension it is, good administration is a complex concept that is difficult to be formulated in a synthetic definition, and to configure this definition it is imperative to respect several other principles, such as the principle of legality, the principle of proportionality, the principle of decision-making transparency, or others objective aspects that have to characterize the activity of the public administration, whether in fulfilling this activity is involved just the public official or even the civil servant.

„In the modern area of social relations there is an increasing demand for good and effective governance which includes good administration"³⁴. As we already mentioned above, the concept of good administration is various and difficult to define in an unequivocal, brief way³⁵, but certainly it means that the functioning process of authorities and institutions forming the executive mechanism for public tasks should be focused on maintaining and improving these freedoms and human rights which determine the level of all people³⁶.

Certainly, „good governance and good administration are loaded with ethical values and principles, such as trust, transparency, responsibility, accountability, responsiveness and participation"³⁷. Thus, it will be better for us to use the same pattern for identifying some constitutive elements even for this concept of good administration, instead of trying in vain to create a rigid definition of this concept. Actually, this is the method used by the Council of Europe or the European Union to identify the defining elements of good administration. Thus, in the Code of good

³² E. Slabu, *Good administration in the European administrative space*, op. cit., p. 8.

³³ *Ibidem*.

³⁴ S. Mazur, *Paradoxes of Polish public administration reformation process*, in A. Bosiacki, H. Izdebski, A. Nelicki, & I. Zachariasz (Eds.), *New public management and public governance in Poland and in Europe*, p. 64, 2010. Warszawa, quoted by A. Lipska-Sondecka, *Problems with right to good administration in the context of new solutions*, Polish Political Science Yearbook no. 1/2015, p. 198, available on: <https://www.ceeol.com/search/article-detail?id=409396>.

³⁵ A. Lipska-Sondecka, op. cit., p. 199.

³⁶ *Ibidem*.

³⁷ O.-P. Viinamäki, R. Ikola-Norrbacka, A. Salminen, *The control of corruption in Finland*, *Administration and Public Management Review* no. 09/2007, p. 84, available on: <https://www.ceeol.com/search/article-detail?id=90618>.

administration adopted by Committee of Ministers from Council of Europe³⁸ are identified these principles: lawfulness, equality, impartiality, proportionality, legal certainty, taking action within a reasonable time limit, participation, respect for privacy, transparency. This Code also mentioned some rules governing administrative decisions³⁹, and some rules regarding appeals⁴⁰.

In order to achieve good administration, a Code of good administrative behaviour is in force at European Union⁴¹, a code that establishes a set of principles that should guide European civil servants in fulfilling their attributions. Such principles are, for example: lawfulness, absence of discrimination, proportionality, absence of abuse of power, impartiality and independence, objectivity, fairness, courtesy, duty to state the grounds of decisions, legitimate expectations, consistency, and advice, reply to letters in the language of the citizen, acknowledgement of receipt and indication of the competent official, obligation to transfer to the competent service of the institution, right to be heard and to make statements, reasonable time-limit for taking decisions, indication of appeal possibilities, notification of the decision. About this code, Emily O'Reilly, the European Ombudsman, stated that: „it is designed to support those efforts by sharing best practice and by promoting – within the institutions and beyond – a harmonised, citizen-focused European administrative culture that both listens to, and learns from, its interactions with citizens, businesses and stakeholders. The code provides guidance on practical steps towards greater effectiveness, transparency and accountability and my office is always happy to provide additional informal advice if necessary...”⁴². This Code includes the general principles of good administrative behaviour⁴³, which applies to all relationships between institutions and their administrations and the general public, and which, in our opinion, should be at least a starting point for identifying specific ones at national level and which should govern the activity of the public administration at any level.

In our national legislation, by the Administrative Code currently in force⁴⁴ the ordinary legislator has identified, through Art. 6 - 13, not only the general principles applicable to public administration, but, by the provisions of Art. 368, a series of principles that govern the professional conduct of civil servants and labour contract servants from public administration, such as: the supremacy of the

³⁸ Committee of Ministers of Council of Europe, *Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration*, op. cit., Art. 2 - 10.

³⁹ *Idem*, Art. 11 - 21.

⁴⁰ *Idem*, Art. 22 - 23.

⁴¹ This code is available on: <https://www.ombudsman.europa.eu/ro/publication/ro/3510>.

⁴² E. O'Reilly, *Declaration of the European Ombudsman*, available on: <https://www.ombudsman.europa.eu/ro/publication/ro/3510>.

⁴³ These principles were specified in those mentioned above.

⁴⁴ *Government Emergency Ordinance no. 57 from 3 July 2019* regarding the Administrative Code, published in the Official Journal of Romania, Part I, no. 555 from 5th of July 2019.

Constitution and the law, ensuring equal treatment of citizens in front of public authorities and institutions, professionalism, impartiality and independence, moral integrity, freedom of thought and expression, honesty and fairness, openness and transparency, accountability and legal liability.

Regarding these provisions we consider that it is appropriate to make the following observations. Thus, these principles do not represent, to a large extent, and with the exception of the principles mentioned in letter j), novelty elements because they were established by Law no. 7/2004 regarding the Code of conduct of civil servants (law repealed when the Administrative Code came into force), before the Administrative Code came into force. Unlike the Administrative Code, but naturally considering the technical aspects of elaboration of normative acts, Law no. 7/2004, identifies, by the provisions of Art. 2, the purposes that determined the legislator to adopt such a code by a normative act with the primary legal force of a law, among them being the one of ensuring a good administration in achieving the public interest. Although some of these principles can be mentioned when we are talking about of the public dignitaries - the local elected officials, as honesty and fairness that are provided, for example, by Art. 224 of the Administrative Code, we consider that all the principles should govern the activity of all categories of employees from public administration, regardless of whether they are civil servants, labour contract servants or even public officials. We are stating this because the legal valuation of some is different. Thus, for example, if in the case of civil servants and labour contract servants the lawfulness is seen as a principle, in the case of local elected officials this is considered to be just an obligation. On the other hand, if we consider that the lawfulness – principle which affect all the type of laws, summarizing the legislator's way to express about it, seems redundant to us anyway, because any one of us as citizens of this state has the fundamental duty to respect the Constitution, its supremacy and the laws (In this context we are using the concept of law in a broad sense – *lato sensu*, namely that of any normative act) provided by Art. 1, paragraph (5) of the Constitution.

In our opinion, it would be more opportunely and appropriate to establish by law a set of principles to govern the activity of the public administration without distinguishing taking into consideration criteria as quality of work or professional qualification of those who have to fulfill their public or professional activities, as it is laid down by law at European Union level.

2. The right to good administration

Romanian Constitution⁴⁵ does not provide, *expressis verbis*, the right to good administration, but taking into consideration the quality of membership of the

⁴⁵ For example, the Constitution of Finland is referring indirectly to the good governance in the Art. 124 by stating that „a public administrative task may be delegated to others than public

European Union that Romania has, and in accordance with the provisions of art. 148 paragraph (2) of the Constitution, which regulates that "the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act", we consider that, for the moment, the right to good administration can be invoked even at national level. We sustain this point of view according to which "the right to good administration reflects a general principle of Union law"⁴⁶, as the case-law of the Court of Luxembourg reveals, to support that this right and principle should also govern our public administration⁴⁷.

The right to good administration is enshrined in the European Union by Art. 41⁴⁸ of the Charter of Fundamental Rights of the European Union, European Legislators establishing in this article the most important elements of good administration and, implicitly, of its correlative right. The right to good administration from the „citizens' rights" chapter of Charter of Fundamental Rights is one of these rights that, together with the non-discrimination clause in Art. 18 TFEU, the right to access to documents and the provisions on democratic principles introduced by Lisbon Treaty into Art. 9-12 TEU, clearly strengthen on

authorities only by an Act or by virtue of an Act, if this is necessary for the appropriate performance of the task and if basic rights and liberties, legal remedies and other requirements of good governance are not endangered". This constitution is available on: https://www.constituteproject.org/constitution/Finland_2011?lang=en. But majority of the constitutions of EU member states are referring indirectly to good administration by providing regulations about the powers and the duties of the authorities from public administration.

⁴⁶ Court of Justice of European Union, *Judgment of the Court (Fourth Chamber), 8 May 2014, H.N. v Minister for Justice, Equality and Law Reform and Others (C-604/12, ECLI:EU:C:2014:302)*, paragraph. 49, published in the electronic Reports of Cases (Court Reports - general).

⁴⁷ Indeed, an indication in this regard also comes from the Constitutional Court of Romania which, by Decision no. 12/2013, it ruled that "regarding the provisions of art. 41 of the Charter of Fundamental Rights of the European Union, regarding the right to good administration", these European provisions can be invoked in the accordance to Art. 148 from Constitution, and Art. 6 paragraph (1) of the Treaty on European Union. See Constitutional Court of Romania, *decision no. 12/2013 on objection as to the unconstitutionality of Art. 6 paragraph (4), Art. 10 paragraph (2), Art. 15 paragraph (5), Art. 17 paragraph (1) letter d) și e), Art. 88 paragraph (1), Art. 91 and of Art. 93¹ from Law no. 504 from 11 July 2002 – Law of audio-visual field*, published in the Official Journal of Romania, Part I, no. 114 from 28th of February 2013.

⁴⁸ The provisions of Art. 41 of this Charter provide that: 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. 2. This right includes: 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, while respecting the legitimate interests of confidentiality and of professional and business secrecy; the obligation of the administration to give reasons for its decisions. 3. Every person has the right to have the Community 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.

important dimension of EU citizenship⁴⁹. If we were to extrapolate the ones mentioned here, but taking into consideration all those mentioned above, also emphasizing that both good governance and good administration are determinable and not indefinite concepts, we consider that this right to good administration must be enshrined, *expressis verbis*, in our fundamental law, as other authors already claim⁵⁰.

In this context, we find it pertinent and appropriate to argue that "the right to good administration requires clear and stable legal provisions, efficient public management, respect for the fundamental rights of people by public authorities, respect for the principles applicable to a modern public administration (lawfulness and transparency of the activity of public authorities, equality of all persons in relation with public authorities, impartiality and proportionality of the actions of public authorities, respect of the reasonable term in fulfilling the activity of public authorities, respect of the private life of people), approval of clear and accessible administrative procedures, internal and external control of activities carried out by public administration authorities, combating corruption, but also efficiency and effectiveness in the activity of public administration, through a performant public management"⁵¹.

Conclusions

In a state where democracy and the rule of law are still learned mostly by the rulers, as is our state, where the public administration and civil servants, but also the public dignitaries, through which public administration is realised, still learn

⁴⁹ P. Craig, G. de Búrca, *EU Law. Text, Cases, and Materials*, fifth edition, New York: Oxford, 2011, p. 852. By more recent judgements, the CJEU has begun to analyse the possible violation of the right to good administration. Thus, in a recent case-law, the General Court stated that „the party who made a request for assistance, as the presumed victim, must be granted procedural rights separate from the rights of defence referred to in Article 48 of the Charter of Fundamental Rights, which are not as extensive as those rights and which are, ultimately, covered by the right to good administration, as now provided for by Article 41 of the Charter of Fundamental Rights. Thus, in order for the right to good administration to be observed, the party who made the request for assistance must necessarily, in accordance with Article 41(2)(a) of the Charter of Fundamental Rights, be properly heard before the decision rejecting the request for assistance is adopted by the appointing authority or the AECE”. Court of Justice of European Union, *Judgment of the General Court (First Chamber, Extended Composition)*, 28 June 2018, *H.F. v European Parliament* (T-218/17, ECLI:EU:T:2018:393), paragraph 70 and 74, published in the electronic Reports of Cases (Court Reports - general).

⁵⁰ V. Vedinaş, *Some considerations regarding the Draft Law on the revision of the Romanian Constitution*, *Revista de Drept Public* no. 3/2013, p. 23, or E. Slabu, *Does good administration represent a basic concept for the public administration reform in Romania?*, *Scientific Annals of Alexandru Ioan Cuza University of Iaşi, Juridical Sciences Series*, no. 2/2016, p. 381.

⁵¹ E. Slabu, *Good administration in the European administrative space*, Summary of the PhD Thesis, p. 5, available on: <https://drive.google.com/file/d/0B8QmaaRFXpKQOpfMU5nb0FfYmM/view>.

that they have to work just to serve the interests of citizens, we consider that the right to good administration should become a new right in our Constitution. This way, we can contribute even more to make our authorities to understand that governance and administration has to be carried out exclusively for the benefit of the people.

The consecration of this right, appreciated by us as one of the guarantee rights, with the right of the person aggrieved by a public authority and the right of petition, all of them being a second generation rights, should be done by identifying all its defining elements, in an exhaustive way, as we have identified them in the ones mentioned above.

We argue our last mentioned point of view by pointing out the fact that many of defining elements of good administration are not settled, *expressis verbis*, by our Constitution, although they are veritable principles, in which case it is necessary to conclude about their constitutional consecration by interpreting the constitutional provisions, as it is, for example, the case of the principle of proportionality.