

Principles of Good Administration under the European Code of Good Administrative Behavior

MIRLINDA BATALLI, *author*

Associated professor at Faculty of Law, Prishtina University

ARTAN FEJZULLAHU, *corresponding author*

PhD candidate at the Faculty of Law, Prishtina University

The purpose of good administration and the conduct of administrative functions by the administration bodies are to provide citizens with the most efficient services by supporting and respecting the general interest of the society and the realization of human rights. Good administration has to be based on principles that serve as a basis for exercising the activities of the administration bodies. The EU member states and those states aspiring to be part of the European family are in constant effort to harmonize principles of good governance, an effort that derives from ideas for a common "European administrative space".

Having this in mind, this paper aims to review: a) the basis of establishing principles of good administration in the European context, b) a description and review of a number of basic principles set out in the European Code of Good Administrative Behavior, and c) an explanation of the importance of implementing these principles from states that aim to have a good and efficient administration.

Keywords: Good Administration, Principles of Good Administration, Implementation of Principles, European Code of Good Administrative Behavior

1. Introduction

The purpose of this paper is to a) provide the basics of establishing principles of good administration in the European context, b) describe and review of some of the basic principles outlined in the European Code of Good Administrative Behavior, b) address the importance of applying these principles by states that aim to have a good and efficient administration, and c) offer recommendations regarding the implementation of the principles dealt with in the paper. Administrative law is defined as the set of rules and principles governing the procedures for the exercise of administrative functions, the organization of the institutions exercising these functions and, in general, the social relations created in the administrative field¹. As such, administrative law enables and at the same time limits the administrative behavior as foreseen in the implementation of EU laws.

As a result, good public administration is linked to the degree of the state democratization and the leadership model since the administration is considered as a multilateral state activity and part of state authority.² It is difficult to imagine the existence of a rule of law without general principles because through them in practice it is possible to resolve disputes and realize the rights of the citizens according to procedural ways rather than to resort to other means that can even lead to violence. In this regard, the principles of good administration can be understood as a basis for good administration in practice. Undoubtedly, a good administration should be based on principles that guarantee the rights and the

¹ SIGMA, Principles of Good Administration 2014, p. 5.

² SIGMA, Principles of Good Administration, 2014, p. 6.

realization of citizens' interest in the provision of administrative services by the public administration bodies.

Good administration is especially important in creating and maintaining the trust of citizens as it has a direct impact on improving the living standards of citizens. As a principle, good administration has been initially envisaged in the Charter of Fundamental Rights of the European Union, which has a legal character in high regard that should be respected by all EU institutions and other structures of Member States tasked with the implementation of EU law. Although the principles of good administration are foreseen in the legislation of different countries, depending on the internal regulation of states, the European Code of Good Administrative Behavior and the European Court of Justice have foreseen some key principles that should be respected by member states that are part of the European Union, as well as by states that aim to integrate in the EU. The Code of Good Administrative Behavior is a very important source to understand the principles of good administration and their importance, as well as to understand the functioning of the right to good administration in practice. Therefore, this paper also focuses on examining some of the key principles set out in the European Code of Good Administrative Behavior. Despite the fact that the code contains a large number of summarized principles, only the following principles are presented in this paper: The Principle of Lawfulness, the Principle of Non Discrimination, the Principle of Proportionality, the Principle of Impartiality and Independence, and the Right to be heard and to make statements. After reviewing these principles, the paper seeks to highlight the importance of applying these principles to countries that claim to have good administration. Finally, this paper will put forward a number of recommendations on how to proceed further in improving the implementation of these principles for countries that are part of the EU, as well as states aiming to be part of the EU.

2. Basis of Establishing Principles for Good Administration in the European Context

Given the chronological aspect of efforts to establish the principles of good administration and their harmonization among EU countries, good governance and its principles are foreseen in several legal acts, resolutions and European treaties which explain good administration as "a framework concept drawing together a set of rights, rules and principles guiding administrative procedures with the aim of:

- Ensuring procedural justice,
- Public administration adherence to the rule of law, and
- Sound outcomes from administrative procedures.

They justly stress that the principles of good administration have developed in close connection with the precept of procedural justice and the principle of the rule of law.³ Each body of public administration should consider these principles as a basis for setting the direction to intensify government efficiency and liability.

Today, the main objective of public institutions is to promote good governance as key tool for the state development toward democratic, transparent, efficient, effective and simplified administrative procedures. These principles during the conduct of administrative procedures affects the reduction of corruption, respect for human rights, improvement of public services, government accountability, sector reforms and state stability in general. According to Fukuyama (2013), there are two dimensions to qualify governance as good or bad: the capacity of the state and the bureaucracy's autonomy. They both complement, in the sense that when the state is more capable, for instance through the collection of taxes, there should be more autonomy because the bureaucrats are able to conduct things well without

³ Jerzy Suprenat: *Good Administration in European Administrative Law*, Institute of Administrative Studies, University of Wrocław, 2011, p. 2.

being instructed with a lot of details. In less capable states, however, less discretion and more rules setting are desirable.⁴

Good governance might be approximated with provision of public services in an efficient manner, higher participation given to certain groups in the population like the poor and the minorities, the guarantee that citizens have the opportunity of checks and balances on the government, the establishment and enforcement of norms for the protection of the citizens and their property and the existence of independent judiciary system.⁵

On the other hand in 1989 the World Bank identified “bad governance” as the main obstacle to development, describing “bad governance” as the absence of accountability, transparency and efficient administration combined with corruption in respect of financial spending.⁶

The fundamental idea is that the public administration exists to serve citizens. That idea does not deny, but at the same time cannot be reduced to, the classical conception of administrative science that the public administration should identify and pursue the public interest.⁷ Further, the United Nations has taken a leading role in reconceptualizing governance. In the UN’s paradigm, governance is defined as “the exercise of political, economic, 7th Global Forum on Reinventing Government 7 and administrative authority to manage a nation’s affairs. It is the complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their rights and obligations and mediate their differences.”⁸

The modern and democratic governments should promote and guarantee the sustainable public bodies in order to establish intellect of accountability towards the citizens. Similarly, the leaders of these free market democracies are developing their own beneficiary goals without considering the basic requirements of the citizens. The citizens have to be conscious about their position in the government in order to increase the level of demands concerning their rights that are guaranteed. Governments and citizens have to guarantee that they work together in good cooperation to achieve the promotion and implementation of principles of good governance.

The challenge for political and administrative leaders in all countries is to redefine the roles of government and to build the capacity of public and private institutions to play beneficial roles in helping citizens to cope with the uncertainties, and benefit from the opportunities, of globalization.⁹

The right to good administration was initially envisaged in two documents that did not have binding effect: a) the Charter of Fundamental Rights of the European Union and b) the European Code of Good Administrative behavior. The European Charter of Fundamental Rights, Article 41, provides for the right to good administration, while Article 42 provides for the right of access to documents. The Code of Good Administrative Behavior aims to detail and clarify the right of good administration provided for in the Charter of Fundamental Rights and at the same time to provide guidance on the implementation of this right in practice, in order to avoid the maladministration by administrative bodies.¹⁰

Unlike the aforementioned documents, the principles envisaged by the European Court of Justice in regards to European Community law are binding for the member state, which implies that member states are obliged to apply them when applying the European Court's right. The legal status of the right to good

⁴ Fukuyama, Francis (January 2013): *What Is Governance?*, Center for Global Development, Working paper 314.

⁵ Merilee Grindle: *Good Enough Governance: Poverty Reduction and Reform in Developing Countries*; *Governance: An International Journal of Policy, Administration, and Institutions*, October 2004, 17 (4): 525–48.

⁶ Beate Rudolf: *Is ‘Good Governance’ a Norm of International Law?* in: *Common Values in International Law: Essays in honour of Christian Tomuschat, Pierre-Marie Dupuy et al.* (editors), 2006, p. 1009.

⁷ Jocelyne Bourgon: *Responsive, responsible and respected government: towards a New Public Administration theory*, *International Review of Administrative Sciences*, Vol. 73 No 1 (2007) 7-26.

⁸ United Nations Development Programme, *Reconceptualizing Governance*, Discussion Paper No. 2. New York: UNDP (1997): 9.

⁹ Dennis A. Rondinelli and G. Shabbir Cheema (eds.): *Reinventing Government for the Twenty-first Century: An Introduction*, Chapter 1. Stanford, CT: Kumarian Press (2003).

¹⁰ *Principles of Good Administration in members of the European Union*, Statkontoret, 2005, p.7.

administration would be strengthened by the agreement on the European constitution, the purpose of which is to establish the constitution of the European Union. The adoption of this constitution was supposed to be unified and all agreements to be replaced by a single document. However, the agreement was signed by 18 states but after France and the Netherlands did not vote in May 2005, this constitution remains unapproved.

If viewed chronologically, good governance as a concept has been used even earlier than the 1977 Council of Europe Resolution, which foresees some principles that are still considered today as basic principles of good administration. According to this resolution, the basic principles for good administration are: the *Right to be heard*, *Access to Information*, *Assistance and Representation*, and the *Guidance on the Use of Legal Remedies*.¹¹ Good governance is also envisaged in Article 298 of the Treaty on the Functioning of the European Union (TFEU), which states "that the institutions, bodies, offices and agencies of the Union during the performance of their mission should have the support of an independent open and efficient European Administration".¹² Therefore, citizens have right to require the development of administrative procedures in harmony with principles of good administration in order to promote transparent and efficient procedures.

The European Code of Good Administrative Behavior was originally proposed as an idea by Roy Perry MEP in 1998. The European Ombudsman has drafted the text on its own initiative and presented it to the European Parliament as a special report. Thus, the parliament's resolution regarding the code is based on the ombudsman's proposal approving the Code of Good Administrative Behavior, which the institutions and bodies of the European Union, their administrations and their officials should respect in their relations with the public. This code was adopted on 6 September 2001 by the European Parliament and foresees the principles of European administrative law according to the practice of the European Court of Justice, also based on the legislation of member states.¹³ Given that the European ombudsman drafted and proposed the code on good governance, it shows the importance of different individuals to have the opportunity to present their offers on how to improve certain policies or government actions that are not deemed beneficial to the citizens. More specifically, for the European citizens the ombudsman is a tool to address the gaps in administration.

Since the Code does not have a binding legal force for EU institutions, agency bodies and agencies, the European Ombudsman Institute has limited authority – mostly applied by offering recommendations, warnings and advice to the relevant institution. Nevertheless the ombudsman is authorized and required to warn the parliament and the public about the practices or decisions that are characterized as cases of bad administration.¹⁴

A clear trend towards strengthening the procedural rights of individuals affected by administrative decisions has also been noted in most Member States of the European Union.¹⁵ In each state, the power of government depends on its democratic and accountable institutions that act according to the rule of law and respect of human rights. The promotion of good administration demands the engagement of governments to promote and protect citizens' rights, to reduce the duration and increase the level of internal control in order to act in harmony with principles of good government. Such demands shall lead to rule of law, reliable and more efficient administration, reduction of corruption and citizen's satisfaction. As stated above, the European Charter foresees the right to good administration as a fundamental right. The purpose of the Code of Good Administrative Behavior is to explain the practical

¹¹ Resolution (77) 31 on the Protection of the Individuals in Relation to the Acts of Administrative authorities, Adopted by the Committee of Ministers on 28 September 1977 at the 275th Meeting of the Ministers' Deputies.

¹² Treaty on the Functioning of the European Union, Official Journal of the European Union, 2012.

¹³ Luxembourg: Office for Official Publications of the European Communities, The European Code of Good Administrative Behavior, 2005.

¹⁴ Ivan Kopriv et al: *Good administration as a Ticket to the European Administrative space*, Udk35.07 EU,061.1.1(4) EU, Izvorni Rad Primljeno:Rujan 2011, p. 1525.

¹⁵ Jürgen Schwarz : *European Administrative Law*. London: Sweet and Maxwell, 1992, p.1175-186.; Carol Harlow: *Codification of EC Administrative Procedures? Fitting the Foot to the Shoe or the Shoe to the Foot*, European Law Journal, Vol 2. No 1. March 1996, p. 6.

implementation of Article 41 and 43 of the Charter of Fundamental Rights of the EU.¹⁶ The Code encompasses 27 articles, including 24 articles dealing with different principles of good administrative behavior and its use is foreseen for all officials and other servants employed by EU institutions, bodies, offices and agencies. The Code is intended to serve as a guide for interaction between the public, citizens, businesses, or civil sector organizations regardless of their nationality or their country of origin.¹⁷

However at the end we can conclude that Grindle argues that the good governance agenda is unrealistically long and growing longer over time. Among the multitude of governance reforms that “must be done”, there is little guidance about what’s essential and what’s not, what should come first and what should follow, what can be achieved in the short term and what can only be achieved over the longer term, what is feasible and what is not. If more attention is given to sorting out these questions, “good enough governance” may become a realistic goal for many countries.¹⁸

3. Principles of Good Administration and their Importance according to the European Code of Good Administrative Behavior

Good administration is the process for issuing and executing administrative acts that need to be delivered through procedures based on the rule of law. In this regard, the main characteristics of good administration include the focus on accountable and transparent governance, meaning that decisions are issued in harmony with positive legislation. Further, good administration includes the obligation of the government to provide to all its citizens administrative services in effective, efficient and in responsible manner. New developments in governments have increased the role of good administration in achieving the expected results of administrative reform, bearing in mind that government performance affects a series of state functions across the various sectors.

Good administration is considered as a basic element that indicates the potency of democracies and the rule of law. The basic principles of good administrative behavior are prescribed in the European Code of Good Administrative Behavior and they regulate all relations between institutions and their administrations with the public, unless they are regulated by specific provisions. Further, these basic principles of good governance describe the relations between institutions and its officials, but these relationships are also regulated by internal acts.¹⁹

The basic principles of good administration encourage a general perception about the importance of good administration and help public institutions to provide direct efforts towards offering more efficient and transparent services to the citizens. In order to achieve and maintain trust among the citizens, the public administration needs to be liable, responsive and considerable towards the citizens. This includes the willingness of the administration to establish a close cooperation with its citizens regarding different matters that are of their general interest. Moreover, the fundamental idea is that the public administration exists to serve its citizens. That idea does not deny, but at the same time cannot be reduced to, the classical conception of administrative science that the public administration should identify and pursue the public interest.²⁰

¹⁶ The European Code of good administrative behavior, Luxemburg: Office for Official Publications of the European Communities, 2005.

¹⁷ Ivan Kopriq *et al*: *Good administration as a Ticket to the European Administrative space*, Udk35.07 EU, 061.1.1(4) EU, Izvorni Rad Primljeno:Rujan 2011, p.1524.

¹⁸ M. Grindle: *Good Enough Governance: Poverty Reduction and Reform in Developing Countries*, Governance, 2004, 17(4): 525 - 548.

¹⁹ The European Code of Good Administrative Behaviour, European Ombudsman, 2001.

²⁰ See generally, Jocelyne Bourgon: *Responsive, responsible and respected government: towards a New Public Administration theory*, International Review of Administrative Sciences, Vol. 73 No 1 (2007) pp. 7-26.

Some of the general principles of administrative law set out in the European Code of Good Administrative Behavior which are foreseen to be applied by all Member States when implementing the European Community law are among others:

- 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.

Moreover, in the European Code of Good Administrative Behavior, the principles governing the area of administrative procedure are set out as: objectivity, public consultation, fair, impartial and reasonable treatment, the right to use the language of a citizen, the right to be heard and make statements, the reasonable time limit for making the decision, the duty to state the grounds of decisions, indication of the possibilities of appeal the instruction of the party to appeal and the notification of the decision.²¹ In addition to these principles, the code also contains provisions on administrative ethics, obligation to transfer documents to competent services or institutions, keeping records of activities and correspondence and the need for the publicity of the code.²² Although the Code of Good Administrative Behavior has foreseen a greater number of principles for good administration, due to efforts to systematize key principles, the most important ones will be presented in the following as well.

3.1 The Principle of Legality

The principle of legality is considered as the basis of any legal order which in essence defines the rule of law and in this sense all administrative activities must be based on legal norms. As stipulated in the European Code of Good Administrative Behavior, the principle of legality is defined as the basic principle under which “the *official shall act according to law and apply the rules and procedures laid down in Community legislation. The official shall in particular take care that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.*”²³

Ewick and Silbey define *Legality* more broadly as “those meanings, sources of authority, and cultural practices that are in some sense legal although not necessarily approved or acknowledged by official law”. The concept of legality the opportunity to consider “how where and with what effect law is produced in and through commonplace social interactions.... How do our roles and statuses our relationships, our obligations, prerogatives and responsibilities, our identities and our behaviors bear the imprint of law.”²⁴

The principle of legality, which is considered as the basis of the functioning of any justice system, is given special importance in the Code of Good Administrative Behavior being that all the administrative actions should be based on the law, while respecting the rights of citizens. The importance of the principle of legality consists of respecting the law, which implies that the activity of administrative bodies should be based on concrete legal provisions whereby the powers and limitations of the scope of

²¹ The European Code of Good Administrative Behaviour, European Ombudsman, 2001.

²² The European Code of Good Administrative Behaviour, European Ombudsman, 2001.

²³ The European Code of Good Administrative Behaviour, European Ombudsman, 2001, *Art 4*.

²⁴ Berman, Paul Schiff: *Global Legal Pluralism: A Jurisprudence of Law beyond Borders*, Cambridge University Press. Via Google Books (27 February 2012).

administrative bodies are foreseen. In this way decisions should be reconsidered by the hierarchy and judges.

In a paper on Normative Phenomena of Morality, Ethics and Legality', Legality is defined taking states role in to account as “*The system of laws and regulations of right and wrong behavior that are enforceable by the state (federal, state, or local governmental body in the U.S.) through the exercise of its policing powers and judicial process, with the threat and use of penalties, including its monopoly on the right to use physical violence*”.²⁵

3.2. The Principle of Proportionality

The principle of proportionality is considered to be one of the most important instruments for controlling administrative decisions, especially administrative discretion. Proportionality acts as an assumption that an administrative action should not go beyond what is necessary to achieve the desired result, i.e. if some measures are considered they are worse off than good at achieving a set target then those measures are better not to apply at all. According to this principle, the law should not be applied harshly if its implementation would achieve an unwanted outcome, which would be considered as misuse of the administrative authority.

As stipulated in the Code of good administrative behavior: “*when taking decisions, the official shall ensure that the measures taken are proportional to the aim pursued. The official shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued*”.²⁶

In the constitutional law, the principle of proportionality finds its use mainly in the field of protection of human fundamental rights and liberties. It is considered as an efficient criterion of appreciation of legitimacy of the interventions of the state authorities in a situation limiting the exercise of some rights.²⁷ Proportionality enjoys the distinction of being one of the most important principles in today's Constitutional and Administrative Law. First in Europe, and later in different ways at a worldwide level, the notion of proportionality in the fields of Administrative and Constitutional Law has been elevated to a basic principle or doctrine acquiring a more specific structure and form.²⁸

3.3. The Principle of Non-Discrimination

According to the European Code of Good Administrative Behavior “*in dealing with requests from the public and in taking decisions, the official shall ensure that the principle of equality of treatment is respected. Members of the public who are in the same situation shall be treated in a similar manner.*”²⁹

In almost all member states of the European Union, the principle of non-discrimination is guaranteed by constitutional rules. In the constitutions of some states, the causes of discrimination are presented decisively, for example. In Austria's constitution, Article 7 foresees that all citizens are equal before the law and no one can be privileged based on their background, gender, status, religion, or physical disability.³⁰ Non-discrimination is also guaranteed by other legal and sub-legal acts of EU member states.

²⁵ Werner Erhard & Michael C Jensen, Steve Zaffron: *Integrity: A Positive Model that Incorporates the Normative Phenomena of Morality, Ethics and Legality*, 2009, SSRN Electronic Journal. Doi:10.2139/ssrn.920625.

²⁶ The European Code of Good Administrative Behaviour, European Ombudsman, 2001, Art.6.

²⁷ Marius Andreescu: *Principle of Proportionality, Criterion of Legitimacy in The Public Law*, Challenges of the Knowledge Society. Law, p. 528.

²⁸ Javier Barnes: *The Meaning of the Principle of Proportionality for the Administration, A comparative view*, research gate, 2007, pp.1-2.

²⁹ The European Code of Good Administrative Behaviors, European Ombudsman, 2001, Art.5.

³⁰ Austria's Constitution of 1920 Reinstated in 1945, with Amendments through 2009 Art.7.

According to the article 14 of the EU convention on human rights the enjoyment of the rights and freedoms set forth in this convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.³¹

The principle of non-discrimination as a fundamental human right is also foreseen charter of fundamental rights of the European union exactly in Article 21 is foreseen any discrimination based on any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.³²

Both between the two world wars and in today's Europe issues of equality and nondiscrimination have arisen most often in the public consciousness in relation to the treatment of groups, most often ethnic or national minorities.³³

3.4. Principle of Impartiality and Independence

According to the European Code of Good Administrative Behavior, officials should be impartial and independent. Attention should be focused on the extent to which administrative authorities should be impartial and independent while deciding an administrative issue. The official should avoid any arbitrary action or preferential treatment that could affect the citizen.

The conduct of the official shall never be guided by personal, family or national interest or by political pressure.³⁴ The official shall not take part in a decision in which he or she, or any close member of his or her family, has a financial interest.

The right to good administration requires decisions to be made in a duly and based on procedures that guarantee impartiality. Impartiality requires the prohibition of arbitrary actions and unjustified preferential treatment, including personal interest.³⁵ Everyone has the right to examine his or her case impartially, fairly and within a reasonable time from the institutions, bodies, offices and agencies of the union.³⁶

The public official has a duty always to conduct himself or herself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced.³⁷

The public official should never accept either gifts that constitute a real or apparent reward for actions or omissions in the exercise of his or her functions. It is essential to preserve the citizens' trust in the impartiality of public administration.³⁸

According to the case law under Article 6 of the European Convention on Human Rights, the right to an independent and impartial tribunal established by law contains both objective and subjective elements, where the objective requirements are mainly institutional, demanding separation of powers.³⁹

³¹ European convention for the protection of human rights and fundamental freedoms, Art.14.

³² Charter of fundamental rights of the European Union, (2000/C 364/01), Art. 21.

³³ Harris Gomien & Zwaak: *Law and Practice of the European Convention on Human Rights and the European Social Charter*, Council of Europe Publishing, 1996, p. 346.

³⁴ The European Code of Good Administrative Behaviour, European Ombudsman, 2001 Art.8.

³⁵ Diana-Urania Galeta, Professor of Administrative Law, University of Milan, *et al*, *The General Principles of EU Administrative Procedural Law*, In-depth Analysis, 2015.

³⁶ Charter of Fundamental Rights of the European Union (2000/C 364/01), Art. 41 (1).

³⁷ Codes of conduct for public officials, Recommendation rec(2000)10 and Explanatory Memorandum, Council of Europe, January 2001, Art.9.

³⁸ *Ibid* Art.18.

³⁹ Harris Gomien & Zwaak: *Law and Practice of the European Convention on Human Rights and the European Social Charter*, Council of Europe Publishing, 1996, p. 169.

3.5. Right to be Heard and to Make Statements

According to the code of good administrative behavior, *“In cases where the rights or interests of individuals are involved, the official shall ensure that, at every stage in the decision making procedure, the rights of defense are respected”*.

Every member of the public shall have the right, in cases where a decision affecting his rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken.⁴⁰

European Convention on Human Rights guarantees the right to a fair and public hearing as follows: Article 6 (1) of the European Convention on Human Rights guarantees the right to a fair and public hearing as follows:

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”*⁴¹

To illustrate this right, we may take an example regarding a notice of termination of the employment contract within the EU military mission. In this regard, the Ombudsman has considered the termination of the contract as unacceptable as the worker was sick, and was on medical leave due to psychological disorders. Being so, he was unable to enjoy the right to be heard and defend himself.⁴²

The right to be heard is also foreseen in the Charter of Fundamental Rights where it is stipulated that *“every person has the right to be heard before any individual measure that would affect him or her adversely is taken”*.⁴³ Regarding the content of the right to be heard, the European Court of Justice has stated that this right is realized when the parties have been given the opportunity to make known their views on the veracity and relevance of the alleged facts and circumstances and documents used to support their claim.⁴⁴

4. Conclusions

The principles that are summarized in the European Code of Good Administrative Behavior generally include all kinds of administrative actions and administration activities. In general, states have included principles of administration in their legal acts, but the difference between them and the principles summarized in codes is precisely that they do not include all administrative activities undertaken by the administration bodies. Although the principles dealt with during the proceedings are guaranteed in state legislations, the summary of principles in a single code would include all stages of the administrative process and would guarantee a safer basis for ensuring the realization of citizens' rights in provision of administrative services and the protection of their rights in administrative proceedings.

The European Code of Good Administrative Behavior, drafted and proposed by the Ombudsman, has no binding legal force for the institutions; in this case the Ombudsman has no full authority, except for the possibility of making recommendations and suggestions to the respective institutions in cases when

⁴⁰ The European Code of Good Administrative behavior, European Ombudsman, 2001, Art.16.

⁴¹ European Convention on Human Rights, Art.6 (1).

⁴² Good Administration in Practice: The European Ombudsman's Decisions in 2013.

⁴³ Charter of Fundamental Rights of the European Union (2000/C 364/01) Art. 41.2(a).

⁴⁴ Case 85/76 Hoffmann-La Roche v Commission ECR 1979, p.461.Para.11.

they violate these principles. Moreover, the Ombudsman is entitled to inform the Parliament and the public opinion for potential cases of violations during the administrative procedure.

From this conclusion we can recommend that, despite the concrete institutional arrangements of the administration in different countries, the state and public administrations should have adopted code-based principles and adhere to standards that are common to EU member states despite the non-binding power of the code and guaranteeing its implementation only in the Ombudsman's supervisory power. The importance of the implementation of the principles set out in the European Code of Good Administrative Behavior is because their implementation guarantees good administration and realization of the rights of citizens and therefore the binding force of the code would be very significant in the administrative justice system in general.

The human factor is crucial to ensuring the implementation or the obstruction of the application of the principles regardless of their regulation by legal acts, hence the professionalism and ethics of the public officials is considered as one of the key factors in the implementation of the principles. In this regard, we recommend the states to pay special attention to the importance of the professionalism, recruitment and ethics of the administration officials and to enable them to have professional and personal development opportunities being that they are required to comply with the legal rules and ethical standards for proper functioning of the administration. Without professionalism in public administration, the overall perception of its work would undoubtedly falter.

The challenge remains to create a common, European Act (Constitution) that would consolidate and unify all agreements by giving them a higher enforceable power in, this case including the European Code of Good Administrative Behavior an act that promotes good administration and realization of rights. The uniform application of the European Code in the EU states would have an impact on the embedding of a common European administrative space.

Failure to apply principles of good administration can result in poor administration and maladministration, weak state institutions, and low capacities to promote its welfare. Maladministration that comes as a result of non-respect of the principles can lead to dissatisfaction among the citizens.