



## OVERVIEW OF THE MOST COMMON TYPES OF MALADMINISTRATION RAISED AT EU LEVEL

Vasilica NEGRU<sup>1</sup>

<sup>1</sup>Danubius University of Galati, Romania



### ABSTRACT

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The right to good administration is a concept through which there are protected the rights of citizens against the abuse of public authorities and institutions, based on the general principles of European administrative law, such as: objectivity, proportionality and equality, non-discrimination, respect for human rights and fundamental freedoms. Maladministration occurs when a public authority or institution violates the principles of good administration and it does not respect the fundamental rights of citizens. For the achievement of the paper we have used content analysis and descriptive documentary research of the documents relevant to this very current issue and of particular interest to citizens, European institutions, national public authorities and institutions, especially the European Ombudsman Report for 2015 and 2014. In conclusion, the most common instances of maladministration in the European Union refer to transparency issues (transparency of decision making, transparency of lobbying activities), ethics, human rights etc.

**Contribution/Originality:** This study is one of the few that has analysed, in parallel, the most frequent types of maladministration found in the European Union and in Romania, starting from the definitions given for good administration.

### 1. INTRODUCTION

The role of public administration consists of satisfying the interests of citizens, respecting their rights and freedoms. This aim is achieved through high standards regarding *good administration* and *good governance*.

As stated in the doctrine, there is no universal definition<sup>1</sup> valid for the concept of good administration<sup>1</sup>, but it is found most often in public law.

The World Bank defined *good administration* in 1992 as being the “way in which the power is exercised in the management of economic and social resources of a country for development”.

In the specialized literature the right to good administration is considered as being “the right of every person to see treated fairly and within a reasonable time the problems by the Community institutions and organisms”<sup>2</sup>.

<sup>1</sup> Carp (2013).

The European Union Charter of Fundamental Rights establishes the right *to good administration* in article 41. This right includes, according to the mentioned document, “*the right of any person to benefit, regarding his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies*” and it mainly includes *the right of every person to be heard before any measure which might prejudice the right of access to personal files, the obligation of the administration to give reasons for their decisions*.

The right to good administration is also provided by the European Code of Good Administrative Behavior, adopted by a resolution of the European Parliament in 2001 and revised in 2013<sup>3</sup>.

Understood as a continuous process of improvement, good administration can be achieved and guaranteed in a democratic society where citizens have access to information on all matters and they can participate in the analysis of the political process in its various stages.<sup>4</sup>

## **2. GENERAL ANALYSIS OF THE MOST COMMON TYPES OF MALADMINISTRATION REPORTED IN THE EUROPEAN UNION**

By the establishment of the European Ombudsman, following the Treaty of Maastricht, it was developed to a new stage, that of “strengthening the democratic legitimacy of EU institutions”, as highlighted in the European Ombudsman's strategy: “Towards 2019”<sup>5</sup>.

According to Article 228 TFEU “The European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints from any citizen of the Union or any natural and legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of institutions, bodies, offices and agencies, with the exception of the Court of Justice of the European Union acting in its judicial role”.

In the conclusions of the Eurobarometer of the European Ombudsman of 2011 on citizens' rights<sup>6</sup> it states that one respondent out of three considered the *right to good administration* as one of the most important rights for citizens.

Article 43 of the Charter states that: “Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman for cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.”

The first European Ombudsman's report it states that “maladministration occurs when a public body fails to act in accordance with an obligatory rule or principle to which it applies”.

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<sup>2</sup> Vedinaş (2017).

<sup>3</sup> In the introductory part it is stated that: “the Code allows citizens to learn about administrative standards to which they are entitled to receive in the relation to the EU institutions. The Code also serves as a useful guide for civil servants in their relations with the public. For the materialization to a greater extent of the principle of good administration, the code helps to promote the highest standards of administration.”

<sup>4</sup> Bari (2001).

<sup>5</sup> The Strategy's targets set by the European Ombudsman regard the following: more relevance within the EU and among the interested parties; increasing the visibility of the European Ombudsman; a significant impact on EU administration; increasing the efficiency of the European Ombudsman <http://www.ombudsman.europa.eu/ro/resources/strategy/home.faces>.

<sup>6</sup> The Special Eurobarometer conducted in 27 countries by TNS Opinion & Social at the request of the European Parliament and the European Ombudsman, through the method of surveys conducted by the Communication General Directorate of the European Parliament (Unit “Research and Political Analysis”), completed in July 2011. It should be noted that in Romania there were conducted 1053 interviews, 30% of respondents believing the right to good administration by EU institutions as one of the most important rights of EU citizens, first, at a rate of 50% it is the right to move and reside freely in the EU. <http://www.ombudsman.europa.eu/press/statistics.faces>.

Every year, the European Ombudsman publishes a report<sup>7</sup> approved by a resolution of the European Parliament<sup>8</sup>, where the essential themes: transparency; fundamental rights; ethical issues; citizens' participation in EU decision-making process; programs and projects funded by the European Union; European Union policy in the field of competition, etc.

In the related report of 2014 it is indicated that between 20% and 30% of complaints addressed to the Ombudsman concerned the lack of transparency in the EU institutions.

Although the Charter of Fundamental Rights of the European Union guarantees in article 42, the right of access to documents of the institutions, bodies, offices and agencies, whatever their medium, most frequent complaints to the Ombudsman institutions refer to the denial of access to documents or information.

As shown in the report there were opened several investigations which aimed at lack of transparency of the European institutions, among them were mentioned those of the European Commission and European Central Bank.<sup>9</sup>

Thus, one survey aimed the Greece's entry into the Eurozone, i.e. the complaint addressed by a German journalist and related to the documents regarding the conversion reports of Greece and correspondence between the European Commission services and the authorities in Greece and other Member States of the European Union. In this case, the European Commission published 140 documents relating to the entry of Greece into the Eurozone in 2001.<sup>10</sup>

In another case where it is alleged the lack of transparency in the European Commission, a German researcher, through a complaint addressed to the European Ombudsman, invoking the Commission's refusal to grant full information on a proposal for a new Regulation on the Common Policy in Fisheries. In its support, the Commission explained its refusal by the fact that the disclosure of the requested documents would affect the decision making process. Following the Ombudsman's recommendation, the Commission agreed to the publication of the information invoked by the German journalist.

Another important issue for the European Ombudsman's activity on transparency of lobbying activities, the importance was justified also by the fact that Brussels is the second center of lobby in the world as importance after Washington.

According to the *Report* approved in 2015, the Ombudsman started in July 2014, an investigation that led to the EU Council's refusal to divulge the guidelines used by the European Union in the negotiations referring to TTIP<sup>11</sup>. However, the Ombudsman investigated the measures adopted by the European Commission to ensure transparent participation in the negotiations of this agreement.<sup>12</sup>

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<sup>7</sup> In this paper we refer to the report of activities undertaken by the European Ombudsman in 2014.

<sup>8</sup> According to the European Parliament report (Committee on Petitions) on the annual report on the European Ombudsman's activities in 2014 (2015/2231 (INI)), it appears that according to the investigations concluded by the Ombudsman, 21.5% related to the request for certain information and access to documents, 19.3% of the Commission's role as guardian of the Treaties, 19.3% in competitions and selection procedures, 16% political and institutional issues, 11.3% to administration and Staff Regulations 8.3% to award contracts or subsidies and 6% performance of contracts. It also states that most inquiries concerned the Commission (59.6%), followed by European Union agencies (13.7%), EPSO (9.4%), other institutions (8.5%), the EEAS (3.8%), Parliament (3.5%) and OLAF (3.2%). For details, see Proposal for a European Parliament resolution on the annual report on the European Ombudsman's activities in 2014 (2015/2231 (INI)).

<sup>9</sup> See the European Ombudsman's Report 2014, p. 7

<sup>10</sup> <http://www.ombudsman.europa.eu/ro/activities/annualreport.faces/ro/59959/html.bookmark>.

<sup>11</sup> TTIP represents the Transatlantic Trade and Investment Partnership, this agreement (EU-US) will create the largest free trade zone in history, as it will establish the rules and standards in crucial areas: food safety; vehicles; chemicals; pharmaceutical products; energy; the environment, etc.

<sup>12</sup> In order to respect the principle of transparency, the Ombudsman made available to the Commission several examples of measures to take in order to allow public access to documents TTIP, the Commission making publicly available, in October 2014, the directives used for the negotiations of TTIP Agreement. <http://www.ombudsman.europa.eu/ro/cases/caseopened.faces/ro/54631/html.bookmark>.

Another investigation of the European Ombudsman dealt with *the structure and transparency of groups of experts* whose recommendations are taken into account by the Commission when drafting the legislation and policies in various fields. In this regard, the Ombudsman organized a public consultation to see the way it is achieved the “representation of relevant areas of expertise and interest in the various groups, whether the appointment of “personal capacity” of experts raise problems and if the activity of groups is very transparent”.

In terms of respecting the fundamental rights of citizens, the European Ombudsman initiated in 2014, by default, two surveys feed into essential.

One of the survey regarded the protection of fundamental rights in the European Union's cohesion policy.<sup>13</sup>

Within the European Ombudsman institution it was expressed the concern over the use of funds allocated to achieve the EU's cohesion policy, estimating that the money could be “used” for the institutionalization of disabled people and not for their integration.”

Within the investigation, there were investigated the following issues: the way of ensuring the compliance with the *Charter of Fundamental Rights of the European Union* within the cohesion policy; if sanctions can be applied by European Commission to the Member States that violate fundamental rights; if funding can be suspended by the Commission or if they can recover funds already used in violation of those rights.

For the results to reflect the existing reality, the Ombudsman invited colleagues from *the European Network of Ombudsmen* and other organizations to protect the rights to formulate views on the subject.

According to the Annual Report for 2015<sup>14</sup> as stated in the report of the previous year, the main issue of the European Ombudsman was to solve complaints concerning the alleged lack of transparency (22.4% of complaints), most of them being the refusal of institutions to allow access to documents or information. The report said that several strategic investigations were opened for transparency, being mentioned several European institutions, such as: the European Commission (Trade Commission); European Central Bank (ECB), etc.

Regarding the transparency of EU decisional process, in May 2015, the European Ombudsman opened an inquiry on the transparency of the “trialogue”, which are, according to the Report, “*informal negotiations between the European Parliament, the Council and the Commission, in order to reach the final agreement on the new EU legislation*”, specifying the transparency benefits of the trialogue procedure, despite the fears expressed by those involved in affecting the legislative process.

The report covers important aspects on the transparency of lobbying activities, ethics, enforcement of fundamental rights by the EU institutions, citizens' participation in EU decision-making process, resulting in significant changes as a result of the cooperation with the Ombudsman's office.

In Romania, the Report of the Ombudsman Institution for 2015, published in early 2016 shows that there were conducted: 15 investigations concerning the right to health and the right to a decent life in several prisons in Romania; 48 surveys on the conditions of detention in prisons in Romania; 13 investigations on private property rights, the right to petition and the right to information to more authorities and public institutions; 11 surveys on the right to information and the right to a decent standard of living in some prisons in our country; 8 investigations concerning the right of petition and the right of a person aggrieved by a public authority; 2 inquiries on the right to a healthy environment in some public authorities and institutions; 17 investigations on protecting children and young people, protection of disabled persons and the right of the person aggrieved by a public authority, etc.

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<sup>13</sup> The EU cohesion policy aims at creating new jobs in order to reduce the effects of climate change, poverty reduction and social exclusion in the less developed regions of the EU. This policy is co-financed by the European Structural and Investment Funds (ESIF), administered jointly by the Commission and the Member States. See The Report from the European Ombudsman, 2014.

<sup>14</sup> <https://www.ombudsman.europa.eu/en/activities/annualreport.faces/en/67667/html.bookmark>.

In cases where the Ombudsman found maladministration situations, issued recommendations<sup>15</sup> to the concerned government authorities, by which requested the revocation of the administrative reform or repair the caused damages, restoring the injured in the previous situation.

The Report states that on respecting the human rights there were registered 717 petitions concerning the violation of the right to information, the right to petition, right to health, right to a healthy environment, right to education, the right of the person aggrieved by a public authority, the right to life and to physical and mental integrity and the right to a decent living.<sup>16</sup>

The Report of the Ombudsman for 2016 states that there have been 12519 complaints, and there were conducted 194 investigations on protection of children and young people and the protection of persons with disabilities; the right to life and physical, mental integrity and protection of children and young people; private property rights, the right to petition and the right of a person aggrieved by a public authority; the right to life and physical and mental integrity; the right to a decent standard of living and the right of a person aggrieved by a public authority; the right to petition; the right person aggrieved by a public authority and protection of the disabled persons, etc.<sup>17</sup>; children's rights, family, youth, pensioners, the disabled people, etc.

The institution of the Ombudsman for 2016 can use specific means of intervention, according to the law, inquiries, recommendations, special reports or notifications ex officio.

As we can see, both at European and national level, good administration is a constant concern of public authorities and institutions. At the same time, we notice an increasing interest of citizens in achieving an efficient administration, transparent, and based on trust. In this respect, our country began a process of modernization, consolidation, reducing bureaucracy and simplifying the administrative procedures.<sup>18</sup>

At European level, the European Parliament resolution of January 15, 2013 with recommendations to the Commission on the Law of Administrative Procedure of the European Union (2012/2024 (INL), states that “the rules on good administration promote transparency and responsibility” and it recommends the codification of fundamental principles of good administration.<sup>19</sup>

### 3. CONCLUSIONS

Good administration is a concept that protects the rights of citizens against abuses of public authorities and institutions, based on the general principles of European administrative law, such as objectivity, proportionality and equality, non-discrimination and respect for human rights and fundamental freedoms.

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<sup>15</sup> Although they do not have the legal effect of sanctions through the recommendations of public authorities are made aware of the need to reassess the unlawful administrative act and its correction. According to the *Report*, the Ombudsman issued during the year 2015, 28 recommendations, 15 recommendations being acquired by notified authorities, five recommendations were partially learned, 5 recommendations were not acquired, and the other three are within recommendations.

<sup>16</sup> Page 189 of the Report.

<sup>17</sup> Page 15 and the next of the Report.

<sup>18</sup> See: Government Decision no. 1076 of December 3, 2014 for approval of the Better Regulation Strategy 2014-2020; Government Decision no. 909 of October 15, 2014 approving the strategy for strengthening public administration from 2014 to 2020 and the establishment of the National Committee to coordinate the implementation strategy for strengthening public administration from 2014 to 2020; Memorandum of Understanding of January 11, 2016 between the Romanian Government and the World Bank on partnership for modernization of public administration and supporting structural reforms; Emergency Ordinance no. 41/2016 on the establishment of simplification measures at central government level and on amending and supplementing certain acts, etc.

<sup>19</sup> The Regulation recommends the codification of the following principles: the principle of legality; the non-discrimination and equal treatment; the principle of proportionality; principle of impartiality; the principle of consistency and legitimate expectations; the principle of privacy; the principle of equity; the principle of transparency; efficiency and service principle.

Good administration is a right of the European citizens. This right can only be achieved in a democratic society, which guarantees to citizens access to information of public interest and participation in the analysis of the political process and adopting the decisions that are of their concern.

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