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Right to Good Administration of the European Union

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Theses guidelines

The aim of the thesis is an analysis of the right to good administration as guaranteed to all EU citizens by Art. 41 of the Charter of Fundamental Rights of the EU. The scope and content of the right will be defined through analysis of the European Court of Justice and the European Court of Human Rights' case law. This relatively new phenomenon of good administration as fundamental right will also be compared to the broader principle of good governance.

Outline:

- Principles of good administration of the EU.
- Right to good administration of the EU (article 41 of the Charter).
- Scope to article 41 of the right to administration the EU.
- Applicability of article 41 of the Charter in public administration and sectors.
- Efficiency and the protection of citizen vis-a-vis action of the states.
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DECLARATION

I hereby declare:

This thesis was prepared separately. All the literary sources and information I used in the thesis are listed in the bibliography.

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In Pardubice on June 30, 2022

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ANNOTATION

Good administration is an important part of administration through which the right of citizens is protected by public administration. It is based on openness, transparency and fair treatment of citizens. The right to good administration also forms part of the EU fundamental right. It is centred on legality, non-discrimination, and transparency. The right to good administration leads to good governance and protection of citizen rights. This is still not without issues of maladministration against EU and Member States administrative bodies and institutions. There have been cases of citizens' rights being infringement upon by these institutions. The main objective of this thesis is to analyse the right to good administration as guaranteed to all EU citizens by Art. 41 of the Charter of Fundamental Rights of the EU. The focus was to analyze cases of good administration as guaranteed to citizens. We, therefore, analysed some cases that were brought before the European Court of Justice and the European Court of Human Rights by citizens. From analysis, the right to good administration is a fundamental right

Keywords

Good Administration, European Union, Charter, governance, Administrative Procedure

ANOTACE

NÁZEV

Právo na dobrou správu v EU

Dobrá správa je důležitou součástí správy, jejímž prostřednictvím veřejná správa chrání práva občanů. Je založena na otevřenosti, transparentnosti a spravedlivém zacházení s občany. Právo na řádnou správu je rovněž součástí základního práva EU. Zaměřuje se na zákonnost, nediskriminaci a transparentnost. Právo na dobrou správu vede k dobré správě a ochraně práv občanů. To stále není bez problémů nesprávného úředního postupu vůči správním orgánům a institucím EU a členských států. Vyskytly se případy, kdy tyto instituce porušovaly práva občanů. Hlavním cílem této práce je analyzovat právo na řádnou správu, jak je všem občanům EU garantováno čl. 41 Listiny základních práv EU. Těžištěm bylo analyzovat případy dobré správy jako zaručené občanům. Analyzovali jsme proto některé případy, které občané předložili

Evropskému soudnímu dvoru a Evropskému soudu pro lidská práva. Z analýzy vyplývá, že právo na řádnou správu je základním právem

klíčová slova

Řádná správa, Evropská unie, Charta, správa, správní řízení

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LIST OF ABBREVIATION

Cedefod	European Center for the Development of Vocation Training
CJEU	Court of Justice European Union
CFR	Charter of Fundamental Rights
CoE	Council of Europe
ECGAB	European Code of Good Administrative Behaviour
ECHR	European Convention of Human Rights
EU	European Union
ECJ	European Court of Justice
GRECO	Group of States against Corruption
ReNEUAL	The Research Network on EU Administrative Law
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union

INTRODUCTION

Good administration is a concept on which public administration is based in providing good governance in a democratic society through effective policymaking and the rule of law. Good administration can be look in many forms. Good administration can be considered the fundamental right that citizens enjoy with their administrative authorities. From different view, it is an administrative obligation conferred on public administration to take appropriate measures in administrative issues.

Good administration is connected to good governance through which authorities respect principles that guarantee citizens' rights. The principle of good administration is a right through which citizens build their confidence in state administration. When implemented, good administrative procedures maintain the citizen's trust as it has a big impact on the citizens and the state. The EU acts as an advocator, implementation, and protector of basic human rights and has good administration enshrined in Article 41 of the Charter. This is a way for citizens to trust that their rights will be respected without bias by Union institutions and public administration.

As stated, good administration is an important part of the Charter. It includes matters relating to accountability, transparency, confidentiality, and the fundamental human rights any person(s) should enjoy in the Union. Matters regarding the right to good administration of the Charter, which is the area of study, borders on issues of impartiality, fairness, and to be heard without bias. The aim is to understand how good administration leads to good governance within the union and the member states. Some member states have integrated good administrative procedures into their national law. This still does not prevent challenges in applying good administrative procedures by member states and Union administrative law.

This work aims to analyze good administration as guaranteed to all EU citizens by Art. 41 of the Charter. The scope and content of the right will be defined through the Court of Justice European Union (CJEU) and the European Court of Human Rights (ECHR) case law. This relatively new phenomenon of good administration as a basic right will also be compared to the broader principle of good governance.

The research is structured into six (6) chapters. The first chapter includes the background to the study, the aim and scope of the study and the objectives, including the research questions. Finally, the significance of the study is all illustrated. Chapter two (2) discusses the study's theoretical framework and the literature review of good administration in the European Union. The next chapter, chapter three (3), discusses the methodology used to collect data and conduct the whole study. Chapter four (4) presents the analysis, and Five (5) discuss the study's findings. Chapter six (6) provides a conclusion and recommendation for the study.

BACKGROUND OF STUDY

1.1 Background and history of the study

Maladministration is an issue of great importance and a priority in the Union and worldwide. Institutional and public breach of rights has become widespread and not easy to identify in the ever-evolving world. Maladministration includes biased, delayed, inattentive, incompetent, unnatural acts, and indecency (Sykes et. Al, 1989). Maladministration can best be defined as (Caiden. 1991) “*administrative action or inaction based on or influenced by improper considerations or conduct maladministration is making an official decision in a way which contrary, arbitrary, unreasonable, lacks justification and procedural fairness with the law or made corruptly*” (Whitton, 2001). Similarly, Sampara (2010) argues that maladministration is the bias, neglect, incompetence, corruption, and non-supervision of people in an authoritative position. Maladministration is behaviour where an individual is denied their administrative right using authorities or resources for a different purpose other than it has been authorized, neglecting a legal obligation, bypassing appropriate channels and authorities, and misuse of materials and immaterial by government or State organizers. Maladministration is the abuse of power, office, misusing public office for private gain, and no more just simple incompetence. Also, Caiden (2017) defines maladministration as “*dysfunctional systemic performance that can be corrected.*” Maladministration is simply a breach of administrative rights and systems. Maladministration overlaps with corruption, and bureau-pathology, where rights are subverted entirely by people's self-interest in delivering decisions or justice. It opens the door to corruption, where chances of being caught or discovered are very slim, as greed overcomes moral scruples. Maladministration is not only seen in less democratic countries or states but also countries with rich and well-developed democratic countries. Maladministration occurs wherever social action exists in an organization. Maladministration has a negative effect as this leads to

- Loss of confidence by the public
- Jeopardize the lives of others
- Oppressive Behaviour
- Exploitations of others
- Conflict of interest

- Failing to achieve the purposes and objectives

The EU is not exceptional in issues of maladministration in the region. Maladministration in the EU happens both at the regional level and institutional level. Administrative decisions relating to duties wrongful been carried out happen in institutions and member states, issues relating to Asylum, Migration, and contracts. Regulation of good administration is essential to prevent and curb maladministration.

Good administration can be defined as the performance of executive duties. Kanska (2004) sees good administration as the “*umbrella principle, comprising of rights and obligations*”. According to Chevalier (2004), good administration is an ethical institution and staff must adopt it. Good administration means that “*administrative bodies have a duty to exercise the powers and responsibilities vested in them by existing laws and regulations, by drawing on the prevailing concept of the law, in a way to avoid rigid application of the statutory provisions and laws*” (Fortsakis,2005).

Good administration invokes as a concept of the EU law could be deemed part of a more comprehensive concept of good which encompassed the EU relying on the principle of a democratic society based on one rule of law and European policy effectiveness. Good administration has been seen to lead to good governance, that is defined as procedures and behaviours affecting how powers are exercised regarding accountability, coherence, effectiveness, openness and participation (Wakefield, 2007). Good administration is based on a somewhat different perceptible which is the way by which administrative authorities, as well as institutions, work. The administration is perceived as effective as long as its actions are efficient from the procedural part and correct in the material aspect. Good administration is considered a duty, measure, obligation, a principle of the EU law (Hoffman & Mihescus, 2013).

Good administration is an aid in describing the corpus of the continuously evolving legally enforceable procedural and substantive requirements with which modern administrative bodies need to comply, as in the case of *Varec vs Belgium*(C-405/2006). Good administration enhances transparency and accountability by evading complicated procedures. It ensures citizen rights and encourages citizens' rights and contributions. Notwithstanding, promoting social faith in the executive power could result in political and social stability. Good administration comprises internal binding rules of administrative practice that do not directly affect citizens but member

states (Martinez,2001). The right to good administration has been defined in Article 41 of the Charter. Article 41 is based on case laws that establish good administration as a of rule of law. These cases which paved the way for the enacting of proper administration as a principle of the Charter included judgments from “*Jean-Louis Burbat v European Parliament*” (C-255/90, P) the Court established that proper administration was not regarded during the procedure of selection. Court of First Instance judgment in the Case T-167/94, T-231/97, “*Union Nationale Nationale des entraîneurs et cadres’ techniques Professionnels du football (Unectef) v Georges Heylens and others*” (C-222/86), which refer to the obligation to state reasons. The Court noted in point (16) of the proceeding that: “*in view of their aims those requirements of community law, which is to say, the existence of a judicial remedy and the duty to state reasons, are however limited only to final decisions refusing to recognize equivalence and do not extend to opinions and other measures occurring in the preparation and investigation stage.*”. Which lays the foundation for the wording in Article 41 on duty to state reasons. Another case that also establishes the right to state reason is the case of “*Technische Universität München v Hauptzollamt München-Mitte*” (C-269/90), which was established the fact that reasons should be offered as well as judgment giving impartial during decision making. The 1989 case of “*Orkem v Commission of the European Communities*” (C-374/87), lays the foundation for the right of defense and fair hearing by applicants. Again “*Organização Gestão de Restaurantes Colectivos Ld and others v Commission of the European Communities*” (T-450/93), the Court of First Instance referred to the Commission’s infringement on the recipient’s right to defense during decision making.

Before the Charter was enacted there existed basic rights, and portions of the right to “sound administration” there existed in the ESCS Treaty of 1951. The ECJ established the protection of basic rights as a basic principle of the community. Article 15 of the treaty states the obligation to give a reason, which was taken over in the EEC treaty of 1957. Also, the article served as the foundation of other principles such as the principle of transparency. The EEC Treaty articles 178,190, and 215 make the wording on the principle of care, actions for damages, and be heard.

In 1977, the Council of Europe noted the need to increase and improve administrative activities and individuals affected by administrative procedures. One of the core functions is to protect the citizens’ fundamental rights and freedom of citizens and improve their individuals' procedural

position by promoting rules of law that will ensure fairness between citizens and administrative bodies and authorities. The recommendation from the assembly was that the committee drafts a model for the individual based on the committee of Ministers Recommendation NO. R (80) 2 and Resolution (77) 31 and the European Code of Good Administrative Behaviour (ECGAB), with the participation of the Council in consultation with the community Ombudsman to enforce the principles. The following principles were stated:

- right to be heard
- Access to data and confidentiality
- Assistance and representation
- Reason for decision
- Indication of Remedies

This principal application was proposed to apply to the protection of a person either physically or legally in terms of administrative procedures during decision making. The resolution that became the step towards good administration can be considered the core principle of good administration.

The German Presidency to the EU in 1999 proposed the Charter at the European Council at Cologne. The council set a committee to draft the proposed Rights. When the Charter was set it was not accepted into the Treaties since the French and Dutch rejected it. On December 7th of 2000, the fundamental rights were consecrated at the Nice treaty by the presidents of various EU members' institutions. The institutional presidents were not given time to read and understand, it since it was signed in haste. At the Treaty of Nice, the Charter was not incorporated into the Treaties but was proclaimed by the community's parliament, council, and commission. The right to good administration was included in the Charter and was conceived at the convention of 2000 at the Nice Treaty. The Charter in 2007, was signed by the presidents of the parliament, council and the Commission, and representatives of the Union States at the Treaty of Lisbon. In as much as the Charter applies to bodies and institutions of the Union, it equally applies to national authorities and bodies when working within the EU law. The Chapter became legally binding in 2009 after the Lisbon Treaty.

The Charter enshrines in the Union law the fundamental rights of citizens and all individuals under the Member states' jurisdiction while strengthening by protecting the fundamental rights of the EU to make it more visible to holders of the rights.

The European CFR is divided into.

- dignity
- freedom
- equality
- solidarity
- citizen right
- justice
- general application and provision of the Charter

The rights are based on the basic rights of Human Rights by the European Convention. The Charter gives a legal value to article 6(1) of the Treaty.

As defined in Article 41 of the Charter, everyone has the right to good administration. The preamble to the Charter refers to various sources, including national, constitutional, and international laws, the case laws of the Court of Justice European Union (CJEU), and the European Court of Human Rights (ECHR). While it is true that *“the subject matter of Article 41 is a well-established administrative principle in national legislations committed to the rule of law, it has generally not been constitutionalized in national law”* (Pech & Groussot, 2010).

The principle of good administration can only be ensured by adherence to the Code of Good Administrative Behavior (ECGAB). The code applies to institutions, working staff, and members the of European Union but still covers individuals with an office in member states. The principles of proper administration do not confer any rights unto individuals but rather unto Union or community institutions and staff.

According to Theodore Fortsakis (2005), *“the principle of good administration is at once a long-standing idea and a ground-breaking one. Its specific content has gradually been nurtured within the framework of the long-established concept of user protection and this principle, enshrined and elaborated on in various instruments and European case law, now stands as one of the cornerstones of modern administrative law.”* The principle of good administration requires care,

and impartiality in the given cases (Azoulai, 2014). The principle of good administration implies duties on administration, which does not require subjective right.

As established in Article 4,6 of the EC treaties, the principle of good administration is not to impose any new obligation on administrators but to strengthen former obligations. The principle of good administrative law includes the principle of care, which requires administrative authorities to achieve impartial handling in administrative cases and hinders the authorities from taking an irresponsible or wrongful decision that could damage an individual's interest in administrative proceedings. It is achieved through an adequate and proper investigation by the authorities in charge. This means it can be seen through the duty to investigate and the public service obligations that are the obligation to act in time.

Another principle is the right to be heard meaning no one should be convicted without being heard. The third principle is for public authorities to state the reasons for their decisions. The principle covers both administrative decisions and legislative. Regarding the legislative act, the public authority's obligation principle states that the legislator should state the legal grounds for legislation. The obligation to state reasons in administrative decisions involves explaining and applying the law in decision-making. Good administration provides public institutions efficient, transparent services to citizens while holding them liable for their decisions. Principles of good administration need to be able to respond to some challenges it faces. These challenges include:

- Reliable and predictable is a challenge that good administration should be able to respond to since it guarantees the legal certainty of the rule of law. Administrative bodies implement the general principle of impartiality to anyone when they exercise administrative bodies' powers based on the powers and responsibilities vested in them.
- Open and transparent, all good administration should possess this trait. Administrative bodies must be able to keep secrets only to protect the legitimacy of those involved. It is the prerogative responsibility to be transparent as possible and allow applicants their right to access their files on request. Administrative bodies must be transparent and serve as responsible civil servants when going about their tasks, duties, and responsibilities, keeping in mind that every decision taken affects everyone during decision-making.
- Good administration requires administrative bodies to be accountable. The work of administrative bodies should be open to scrutiny by other legislative bodies or

administrative bodies. Accountability and supervision ensure that public authorities respect administrative laws and decision principles. Every decision taken by authorities should follow procedural rules, where administrative bodies must be able to give reasons for decisions, give relevant evidence, and another legal basis on which they came about with the decisions. They should be able to specify the reasons for rejecting interested parties and give notice to everyone involved in their decision-making. Every procedure is documented and kept suitably for applicants to have access when the needs arise. Accountability allows individuals to give complaints when maladministration has been offered. An example is the duty of the Ombudsman who acts as a mechanism to investigate complaints of maladministration and recommends corrective action when necessary.

- System of judicial control over administrative acts foster trust from applicants. This allows citizens the right of defense. The court provided adequate power to scrutinize administrative action based on legal means before the pronouncement of their final decisions. Good administration should be able to submit to the proper legal procedure without good administration being substituted.
- The public administration should be effective and efficient in handling the public problem achieve the administrative decision goals. Results are based on experiences using resources in a balanced way to arrive at their decisions.

The principle of good administration is based on lawfulness, non-discrimination, proportionality, legality, and equality, as established in the European Code of Good Administrative Behavior (ECGAB) to check institutions and administration.

1.1.1 Principle of legality

The principle of legality requires that those involved be aware of the obligation imposed on them and get to know what their rights and obligations are, as well as steps taken when community or union laws are being applied. It is the legal basis for the rule of law in administrative activities.

“Principle of legality is when 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 right or interests of individuals have a basis in law and that their content complies with the law”. (ECGAB,2001)

The principle of legality emphasizes that decisions regarding good administration must be based on the law so that the rights of citizens are respected.

1.1.2 Principle of proportionality

It is a requirement that measures the Union law and action based on law. That is to say, where there are several measures to apply, the only action is to be taken and nothing more in order to meet the legitimate objectives pursued by the acts in question as in the case of *Schröder v Hauptzollamt Gronau*(C-265/87). This principle is set under Article 5 TEU, where its application criteria are set in Protocol (NO.2) which states, “*the content and form of Union action shall not exceed what is necessary to achieve the objectives of the treaties*”. The principle is considered when protecting basic rights and liberties. The principle of proportionality is important in administrative law used to control administration discretion and decision. The principle of proportionality principle prescribed under article 6 of the Code Good Administrative Behavior (2001) “*for decision officials shall make a fair balance in decisions related to private persons and the general public interest*”. Again, making sure officials avoid restricting the rights of citizens.

1.1.3 Principle of equality

It considers that account the discrimination, and impartiality based on nationality or a recipient, is based on the freedom of provision of service concept set in Article 49 EC. Article 6 of the ECGAB states that “*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.*” Equality is an important aspect of the fundamental rights of the Charter guaranteed by legal acts of the EU member states. Article 21 of the Charter states that “*any form of discrimination based on the ground of sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of minority, property, birth, disability, age or sexual orientation will be prohibited and applied with the scope of the treaties without prejudice*”.

1.1.4 Principle of Impartiality and Independence

The principle of Impartiality states that officials should be impartial and independent, while focusing on the extent to which the administrative officials should display impartiality when implementing administrative issues. Emotions or personal, family, or political interests or pressures should not guide the official behavior. Decisions made should duly follow procedure, which is from impartiality. Recommendation rec (2001)10 of the Code of Conduct requires that

officials carry out their duties in a way that conveys public integrity, trust, impartiality, and effectiveness in the public eye. Preserving the public trust and not letting official decisions sway into being partial requires that officials don't accept gifts that do not change their stance of being accountable for what their implementations (Batalli, 2018)

1.1.5 Right to fair hearing

As stated in Article 41(2), the principle states that everyone person has the right to be heard before a decision (action) affects them. This is only realized when the parties are allowed to share their views on alleged facts and support them with documents in defending their claims (Batalli, 2018). The right of the individuals should be respected in cases at every stage of the decision making. Article 6(1) of the ECHR guarantees that the right to a fair hearing is a civil right and responsibility of any charges against them. Everyone is entitled to a fair hearing conducted by an impartial panel set by law at a reasonable time.

In 2003, the Ombudsman institution was set up upon the recommendation and request of the parliament at the national level in member states where it does not exist. In the white paper, it was recommended that states adopt an individual right to good administration at the constitutional level, followed by the draft of a model text by the committee of ministers and which they should adopt and implement code of good administration fully.

Jacob Soderman was elected as the first Ombudsman by the parliament in 1995. The Ombudsman is responsible for finding maladministration, giving advice, and pursuing cases brought within its remit. The European Ombudsman was created to help improve the relationship between citizens and European administrative bodies (Peter, 2005). This means that European institutions are to revise their Code of Good Behaviour implementations every two years of its operation, giving information back to the ombudsman. Failing to apply this directive and achieve the standard was also deemed as maladministration by the Ombudsman, which also had its legal implication (Wakesfield, 2007). Article 195 EC defines the mandate of the Ombudsman, where it also proposes drafting of rules and principles for the institutions and organs. Also, the inclusion of good administration of European Charter and adoption of an administrative law as a Union regulation (Mendes, 2009).

As defined in Article 41 of the Charter, good administration states: “

- 1) *1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices, and agencies of the Union.*
- 2) *This right includes:*
 - a. *The right of every person to be heard, before any individual measure which would affect him or her adversely, is taken.*
 - b. *The right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy.*
 - c. *The obligation of the administration is to give reasons for its decisions.*
- 3) *Every person has the right to have the union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.*
- 4) *Every person may write to the institutions of the Union in one language of the treaties and must have an answer in the same language”.*

The scope of the Charter applies primarily to institutions, bodies, and staff of the Union in compliance with the principle of solidarity. The wording was drafted in reference to Article 6(2) TFEU, which requires the Union to ensure the fundamental human rights of citizens. The scope of good administration states:

1. *“The provisions of this Charter are addressed to the institutions, bodies, offices, and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles, and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.*
2. *The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify power and task as defined in the Treaties”*

Right to good administration worded in article 41 CFR affects only EU institutions, staff and when member states apply the law.

1.2 Research Objectives

The aim of the research will be accomplished by achieving the following research objectives.

1. Examine the EU's rights to good administration.
2. Identify the challenges of ensuring good administration within the Member States.
3. Assess ways the right to good administration protects the citizens in member states.

Analysis of good administration through case laws and the opinions of others relating to the final verdict and judgment in terms of maladministration.

1.3 Thesis Questions

The following research questions guide this research:

1. How does Article 41 guarantee good administration within the member states?
2. What are the challenges of ensuring good administration within the member states?
3. How does good administration protects citizen right within the member states?

1.4 Significance of the study

The study seeks to add to the literature and research conducted on the good administration of the European Union. This area is a less tackled field of EU administrative procedure on how good administration leads to good governance. The research will propel other research into good administration and reveal more issues that will focus on good administration in EU member states and how it can be implemented effectively.

This study will also help member states not only implement the right to good administration when working with union law. However, it will also fully recognize it as a functioning right rather than a principle that can lead to good governance and increase public trust and confidence.

It is the hope that this research will help shape administrative practices and procedures in member states, EU institutions, and bodies.

1.5 Sources of Data

This work relied solely on secondary data analysis and used pre-existing data rather than primary sources due to my inability to conduct field research. According to Boslaugh (2007), secondary

analysis refers to “*in the broadest sense, analysis of data collected by someone else.*” Documents analyses include staff rules and staff regulations of the European Union. Cases for this thesis were selected from the civil service tribunal and the selection was based on issues relating to transparency, and discrimination to support the aim of this research.

1.6 Research design

Data generated for this research was analyzed qualitatively. “Qualitative Data Analysis is the range of processes and procedures whereby we move from the qualitative data that have been collected into some form of explanation, understanding or interpretation of the people and situations we are investigating” (*Gibbs et al., 2010*).

1.7 Data analysis

This thesis employed a descriptive approach to analysis. Comparison of data for this study from multiple sources enhanced data quality which was in line with the principle of convergence and the validation of finding.

2 LITERATURE REVIEW

This chapter is dedicated to reviewing various studies conducted on the EU's right to good administration. It seeks to bring and dive into good administration as enshrined in Article 41 of the Charter and the various portion.

2.1 Definition of Good Administration

The word "administration" is from the Latin word "ad" and "ministare" which means "to minister" or "serve" or "manage". The administration means the managing of affairs or people. The administration is the act of administrating something (Encyclopedia Britannica). As established in the previous chapter maladministration means bad administration and is the opposite of good administration

There is no clear definition for good administration, and it varies based on the perspectives. Soderman (2005), describes "*good administration as a fundamental right*". Vaczi (2008), describes it as "*administrative bodies a duty to exercise the powers and responsibilities vested in them by existing law and regulations, by drawing on the prevailing concept of law, in such a way as to avoid an overly rigid application of good administration*" is by making right decisions from public administration (Bonomo, 2015). Good administration is the obligation or the standard of public authorities and staff to take measures on administrative issues (Mustafa, 2012). Public authorities must take the proper measures on administrative issues. Negrut (2011), sees good administration as to how administrative authorities work. According to Azoulai (2007), it is considered good administration when individual issues are dealt with impartially and fairly. Reichel (2008), good administration is a requirement for authorities and a right for individuals in their relationship with authorities. This means that once an action is done per the law, those affected by maladministration are given the right to fair hearing and the right thing is done and instituted. The common denominator is the effort to regulate the fundamental nature of these rights as a public subjective right (Mendes,2013). Marcusson (2012), sees good administration in a much broader context, where the administration is seen as legitimate, as long as the action is efficient not just in its procedure and its material aspects. Nehl states, "*an aid to describing the corpus of the continuously evolving-legally enforceable and unenforceable-procedural and substantive requirements with which a modern administration has to comply.*" Good administration is not something that is not legally enforceable in decision making but instead is a deliberate chosen legal

notion that compromises both procedural and administratively. Good administration functions towards promoting social faith in the executive power which can result in political and social stability. SIGMA (2014) describes it as “*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*”. Good administration is essential in maintaining citizens’ trust as it has an impact on improving the living standards of citizens. According to the Ombudsman, good administration depends on a service culture to citizens. The Ombudsman upon finding any maladministration refers the issue to the ECJ.

2.2 Court of Justice European Union

The Court of Justice has helped developed administrative procedures through various case laws in the form of general principles (Mustafa, 2010). The ECJ is still considered the main source of rules for administrative procedure in the community. The ECJ defines good administration as a fundamental right and an individual’s relationship with their authorities. Good administration and principles have been defined and applied in European Union Courts’ legal assessments and judgements. Before the Charter was enacted, the Courts used portions of good administration laws found in the previous chapter. In the case of *Maurice Alvis v Council (C-32/62)*, the procedural principle was the right to be heard which was recognized as a requirement in administrative law. The Court at that time established that the right to fair hearing is a general principle that exists in the community. The fact that one must be given the opportunity to be heard as well as answer allegations before decisions are taken by the institution involved. The right to good administration was considered in the case of *Nolle* in 1995, through the principle of care. The Court established that the Commission and Council did not apply the principle of care and due diligence in their decision-making. In the cases of *Hoffman vs Commission (C-85/74)*, and *Al-Jubail v Council (C-49/88)* the court indicated that the right to fair hearing is an important part of the rule of law which is a fundament right of everybody. It annulled the administrative decision by the commission on the fact that the reason for the decision was insufficient just as in the case of *Germany v Commission (C-24/62)*. The right to good administration is mainly used in conjunction with other principles and rights in legal cases (Mendes, 2009).

2.3 European Convention on Human Rights

The European Convention which came into force in 1953 in Rome, was created to ensure and prevent the abuse and dehumanizing of people's rights. Member states under the CoE form part of the ECHR. Under Article 1 of the ECHR, parties are bound to apply and enforce the person's rights within their jurisdiction. The European Court of the Human Rights (ECtHR) serves as a supervisory on member states in addressing complaints from citizens in terms of violation of their rights. Once individuals have established that they have exhausted all domestic remedies they can refer their cases to the ECtHR. Like any other right enshrined in the Charter, good administration has also been captured in ECHR articles. Articles 6 and 13 guarantees the right to a fair trial and effective remedy as enshrined in Article 41 and Article 47 of the CFR. Under the interpretation of Article 53 of the Charter rights in the ECHR and those in the CFR that overlap should be given the same legal meaning and scope.

2.4 Council of Europe

Established in 1949, the Council of Europe's aim is to protect human rights and implement the rule of law. The Council of Europe has been an important institution in the field related to administrative procedures in the union (Harlow, 1996). The CoE started building the framework about a decade ago based on applying a standard that member states can apply. According to Potter, *"the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress"*. The Council is to maintain and promote human rights as fundamental freedom to achieve greater unity. The CoE worked on some principles like to be heard, access to information, assistance and representation, statement of reasons and also to give remedies. The Council of Europe has given substantial administration and good administrative law requirements. These resolutions and recommendations provide guidelines to member states, union staff, and personnel of EU institutions (see appendix). In 2003, the Parliamentary Assembly recommended the government of the CoE adopt at a constitutional level good administration based on the drafting of a model using the Committee of Ministers and fully adopt and implement the code of conduct for public affairs (Recommendation No. R (2000) 10). Article 15(b) of the statute of the Council of Europe (CoE) makes provision on which recommendation is adopted as a model of conduct for public officials based on conduct for public

officials and institutions. The Council assigned the Group of States Against Corruption (GRECO) to monitor the implementation of the recommendation (Borlini, 2019).

2.4.1 Council of Europe Code of Conducts and Recommendation

Article 15(b) of the statute of the Council of Europe (CoE) makes provision on which recommendation is adopted as a model of conduct for public officials based on the conduct of public officials and institutions. The main aims of the recommendations are to bring harmonization between European rules protecting individuals and public authorities (Benoit-Rohmer et al, 2005). Recommendation CM/Rec (2007) 7 on good administration was created to bring standards of good administration together as well as encourage the Member States to adopt the right standards for effective implementation (Gerber, 2008). The recommendations are not only on cases that affect only decisions with the legally binding effect but also on physical acts affecting right applied by police and administrative warning (*Leela Förderkreis E.V and Others v Germany*). The code of conduct that the CoE has set is referenced in Recommendation No. R (2000) 10 for public officials serving as a standard of its evaluation activities. The code of conduct for public officials as promoted by Recommendation No. R (2000) 10 “*recommends that the governments of States, promote subject to national law and principles of public administration the adoption of national code of conducts for public officials based on the model of code of conduct for officials annexed to the recommendations*”. The GRECO serves as an institution to monitor and evaluate officials and member states in terms of accepting and becoming politically bound by it as well as its evaluation (W. Rau, 2013). Article 1 of the code of conduct of public officials (Recommendation No. R (2000) 10) states the code is applied to every public official and private employee applying public service (Article 1.3). Every official must comply with the provision available in the code (CM/ Rec (2000) 10, Article 20). The codes aim to set a standard of integrity and conduct to be observed by public officials, helping them to meet the standards required by them. A public official in the public administration is to perform their function in a lawfully and ethical standard maintaining neutrality (Article 4) and not act politically. Articles 5 and 6 expect public officials to act fairly, honestly and impartially by performing their duties.

2.4.2 Code of Good Administrative Behavior

The European Code of Good Administrative Behavior was first drafted in July 1991 July by the Ombudsman. Kanska (2004), suggests it was created based on the request of the European

Parliament. The parliament presented and approved the code through a resolution in 2001. Addink (2019), states “*after the code approval, it was sent to all institutions and organization of the European Union with the request of these department, civil servant to create their own code based on it and enforce it.*” The Union has adopted its impacts, and some member states have adopted the code. The ECGB is what the Ombudsman applies in investigating maladministration to elaborate the right of citizens towards good governance as laid down in article 298 TFEU and 41 of the Charter. The Code consists of 27 articles and one of the intentions of the code is to explain how the right as enshrined in article 41 of the Charter works in detail.

2.5 Right to Good Administration (Article 41 of the Charter)

The pronouncement of good administration as described in Article 41 of the Charter has been framed as “subjective rights” aim towards setting a standard that can be applied to all EC institutions and administrative procedures (Kanska, 2004)

As stated in Article 41 of the Charter:

- 1) *“1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*
- 2) *This right includes:*
 - a. *The right of every person to be heard, before any individual measure which would affect him or her adversely is taken.*
 - b. *The right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy.*
 - c. *The obligation of the administration to give reasons for its decisions.*
- 3) *Every person has the right to have the union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.*
- 4) *Every person may write to the institutions of the Union in one languages of the treaties and must have an answer in the same language.”*

Good administration is among citizens’ rights listed in the Union Charter. Article 41(1) provides for the right of all person to have their affairs dealt with impartially, fairly and within a reasonable time by the institutions and agencies of the Union. Provisions have been made in Article 16(1) of

the Code of Good Administrative Behavior (2001), where officials should respect defendants' rights during decision-making. Article 17 of the ECGAB (2001) states that the official must ensure that decisions on a request to the institution are responded to within a reasonable time limit and without delays. This is not only complaints but also requests from letters from members of the officials. The right to a fair hearing and trial is also enshrined in ECHR Article 6(1) which requires that "*in the determination of his civil rights and obligation or any criminal charges against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*". This right is only limited to disputes concerning criminal charges in civil rights and obligations.

Article 41(2(a)), the right fair hearing is a right that benefits every citizen. The right to be heard applies to member States and its' institutions when acting within the scope of the EU law. According to Craig (2014), it grants rights to be heard where it is measured to see how a person is affected, where it is not against the Claimant. The EU courts protect the right to be heard in every individual decision irrespective of the requirement of the Treaty, regulation, directive or decision. The right to fair hearing is applicable in institutions of the Member State when it acts in the scope of the EU law.

Article 41(2)(b), access to one's file and respecting their legitimate interest and maintaining a level of confidentiality. A person's access to his file is part of the right to a defense equally applicable to every person within the Member States. The right to access documents is also mentioned in Article 42 of the Charter with a corresponding binding text in *Regulation (EC) 1049/2001*. About confidentiality and data protection (secrecy) provisions have also been covered in Article 8 CFR. Detailed provision on the exercise of the right and procedure is mentioned in *Regulation (EC) 45/2001* while *directive 95/46/EC* also highlights the protection of citizens' data from third-party access. In the case of *Varec v Belgium (C-450/06)*, the Advocate General noted that in the application of file Confidentiality and protection even if there are procedural consequences such rights are substantive rights (basic human rights one possesses in a society). Access to files is important to help in decisions being made or made when an applicant seeks to challenge the administrative decision through a judicial review. Access to one's file allows an individual or applicant to put counterarguments when exercising or challenging the decision made by administrative bodies. As in the case of *Commission v Technische Glaswerke Ilmenau (C-139/07 P, 2010)*, Technische Glaswerke relies on Regulation (EC) No 1049/2001 (the right of everyone to

access documents) in demanding access to documents by the public under Article 4(2) of the regulation. The Court referred to Article 2(1) under Regulation No 1049/2001 that the Commission, Council or Parliament is required to provide access to files or documents once requested unless otherwise, it falls under Article 4(1) to (3) of the Regulation. The right to access and protection of a file is mostly part of the right of defense, mostly in competition proceedings. It has been included in the regulations governing competition (Regulation (EC) No 773/2004 under Articles 15 to 16. Failure to provide access to a file lead to the annulment of a decision (Craig, 2014, 1088). The right to data protection and secrecy or confidentiality is also stated in this section of the article. The right to individual personal data protection is embedded in Article 16(1) TEU, which states that “*Everyone has the right to the protection of personal data concerning them.*”, this is also about Article 8 of the Charter. For good administration to occur, it is expected that the EU institutions, bodies, and Member States’ authorities should pay attention to the protection of individual data in administrative procedures. This promotes administrative accountability and transparency.

Article 41(2 C) puts obligations on administrative bodies to give a reason for every provided decision. This wording is about Articles 296 and 298 TFEU. Article 296 TFEU establishes that reasons should be stated based on or in reference to the proposals, initiatives, recommendations, requests, and opinions required by the Treaties. The rationale of providing a reason from the perspective of the affected parties makes it transparent why a measure was adopted (Craig, 2014). The duty to give reason should be thought through by the decision-maker. The fact of explaining oneself and defending a decision taking is very hard work to do. In the case *Commission v Ireland (C-89/08 P)*, the Court established:

“Furthermore, it has been consistently held that the statement of reasons required by Article 253 EC must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of

law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question.”

The obligation to state the reason and make it clear and precise can also be found in Article 6 TFEU. The duty to give reasons is very important when individual decisions are made. The duty brings along the principle of transparency and participatory democracy in situations or proceedings, which leads to adopting an act of general application.

Article 41(3), *“Every person has the right to have the union make good any damage caused by its institutions or by its servants in the performance of their duties.”*

Article 41(4) states that any person writing to the institutions of the Union in one of the languages of the Treaties must have their answer in the language they wrote to the institution. There are 23 working languages of the Union, which include Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish. Regulation 1/1958 determines the language of use and procedures in using an official language of the Union. English, French and German are the general languages employed by the European Commission as procedural languages. However, the European Parliament provides the different languages to the needs of the Member States. The wording in Article 41(4) of the Charter argues that minority languages should also be regarded as a general principle of the Union. Documents sent to the EU institutions or bodies using one of the official and working languages should be replied to in the language.

Thus, the scope is defined by article 51 of the Charter. Which states that:

- 1. “The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.*
- 2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify power and task as defined in the Treaties”*

The scope of the Charter clearly states the right of the Charter applies primarily to institutions and bodies of the union in compliance with the principle of solidarity. The wording of article 51 was drafted about Article 6(2) TFEU, which requires the Union to respect the fundamental rights of the citizenry. The institutions of the EU are defined in Article 13(1) as:

“The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions. The Union institutions shall be:

- 1. The European Parliament*
- 2. The European Council*
- 3. The Council*
- 4. The European Commission*
- 5. The Court of Justice of the European Union*
- 6. The European Central Bank*
- 7. The Court of Auditors.”*

Article 51(2) of the Charter recognizes the Charter as where provisions are made in the Treaties shall be exercised under conditions and within limits defined by the treaties. Based on the Council of Europe (COE) *Recommendation NO. R (80)2* serves as a guideline and *Resolution (77)31*, which acts as a binding principle laid down to let institutions and authorities work within the limits of the powers that have been conferred on them through the treaties, objectives, and procedures. Once national authorities act outside the union law, they are not under any obligation to apply the principles but must regard and implement the rights once they act within the scope of the union (Groussot, Pech and Petursson, 2012).

Cuculoska (2018), states good administration as defined in article 41, seems to be narrowed towards only the institutions of the Union. However, it becomes broader once the scope has been applied which extends to not binding member states but allowing member states to realize the need to apply the rights or principles once it is applied or EU law. Application and implementation of good administration to Member states is determined by Article 51 of the Charter and other rights (Kristjansdottir, 2012). The scope of the Charter addresses the implementation of the Right to Good administration when implementing EU and national laws.

The application of Union law is a doctrine of Procedural, which gives EU Member states the chance to decide how and when it takes place. Right to good administration defined in Article 41 allows the Member States to lay down their Procedures in applying it through the guideline of the Charter, limiting it to institutions the of the Community. According to Reichel (2008), Member States are to ensure that applying procedural rules differently is a requirement of the EU law for the effectiveness and appropriate level of protection of rights which will guarantee the principles established by the Union law. Thus, when applying Union law Member States' actions are only affected once they fall within the scope of the Union Law. The Scope of the right to good administration functions as a guide for an effective way of applying the Union law by National authorities within the Member States. The scope and principle of the right to good administration as stated in Article 41 of the Charter has backing from Article 6(1) TEU which states that rights, freedoms and principles of the EU Charter of Fundamental Rights have the same legal value with the Treaty. This means that the right to good administration provided in Article 41 does not differ from the right of the Treaty. In case C-220/20/Order (41), Court established that Article 51(1) was addressed to the Member States only when they are implementing Union law and when the situation doesn't fall within the scope of EU law, the Court has no jurisdiction to hear and the Charter cannot be a basis for the jurisdiction. In the joined cases of *European Commission and Council of European Union v Francisco Carreras Sequeros and Others (C-119/19 P & C-126/19 P, 2020)* point 110, the court established that Article 51(1) on the Charter, is addressed, inter alia, to institutions which is required to respect the rights that have been enshrined in it. The scope of Article 41 is addressed to the institutions, bodies, offices and agencies of the Union as described in the same context of Article 298 TFEU and in light with the principle of procedural autonomy. It is imperative to have a distinction between the scope of the general scope of the Charter and the right to good administration. Nevertheless, it is essential for the Member States, to respect the general principles of the EU law.

2.6 Right to good administration and national laws

National laws primary influence European administrative law. According to Bells (1998), national legal systems have absorbed certain administrative principles. Member States have adopted Comprehensive codes for administrative procedures. Member States with common laws have a more flexible approach with a non-binding standard of administrative behavior instead of codes of

procedure (Goldsworthy, 1994). France has partial codification of administrative procedures in its various laws governing (Kanska, 2004). Below is

Table 1 shows the Member States with administrative laws

Country	Sources
Czech	<p><i>“Charter of Fundamental Rights and Freedoms”</i></p> <p><i>Article 36</i></p> <p><i>“(1) Everyone may assert, through the prescribed procedure, her rights before an independent and impartial court or, in specified cases, before another body.</i></p> <p><i>(2) Unless a law provides otherwise, a person who claims that her rights were curtailed by a decision of a public administrative authority may turn to a court for review of the legality of that decision. However, judicial review of decisions affecting the fundamental rights and freedoms listed in this Charter may not be removed from the jurisdiction of courts.</i></p> <p><i>(3) Everybody is entitled to compensation for damage caused her by an unlawful decision of a court, other State bodies, or public administrative authorities, or as the result of an incorrect official procedure. (4) Conditions therefor and detailed provisions shall be set by law.”</i></p>
Slovenia	<p><i>“Constitution of the Republic of Slovenia”</i></p> <p><i>Article 22</i></p> <p><i>“Everyone is guaranteed equal rights in any proceedings before other public authorities, local community governments and public authority</i></p>

holders deciding rights, duties or interests their legitimacy”.

Article 26

“Right to compensation everyone has the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or body performing such function or activity under state authority, local community authority or as a bearer of public authority. Any person suffering damage has the right to demand, in accordance with the law, compensation also directly from the person or body that has caused damage”

Article 39

“Freedom of expression freedom of expression of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive and disseminate information and opinions. Except in such cases as are provided by law, as shall be the right to reply to such published information”

Article 40

“Right to correction and reply the right to correct published information which has damaged a right or interest of an individual, organization or body shall be guaranteed, as shall be the right to reply to such published information”.

<p>Slovak Republic</p>	<p>Slovak Republic Constitution</p> <p>Article 26 (5)</p> <p><i>“Public authority bodies are obliged to provide information on their activities in an appropriate manner and in the State language. The conditions and manner of execution shall be laid down by law”.</i></p> <p>Article 46</p> <p><i>“Anyone who claims to have been deprived of his rights by a decision of a public administration body may turn to the court to have the lawfulness of such decision reexamined unless laid down by law otherwise. The reexamination of decisions concerning basic rights and freedoms may not, however, be excluded from the court’s authority.</i></p> <p><i>(3) everyone is entitled to compensation for damage incurred as a result of an unlawful decision by a court, or another state or public administration body, or as a result of an incorrect official procedure”.</i></p> <p><i>(4) “conditions and details concerning judicial and other legal protection shall be laid down by law”.</i></p>
<p>Portugal</p>	<p>Constitution of the Portuguese Republic</p> <p>Article 22 (liability of public entities)</p> <p><i>“Jointly with the officeholders of their entities and organs and their staff and agents, the state and other public entities are civilly liable for actions or omissions that are committed in or because of the</i></p>

exercise of their functions and result in a breach of rights, freedoms or guarantees or in a loss to others”.

Article 266 (fundamental principles)

1. *“The public administration shall seek to pursue the public interest, with respect for all those citizens’ rights and interests that are protected by law”.*
2. *“Administrative organs and agents are subject to the constitution and the law, and in the exercise of their function must act with respect for the principles of equality, proportionality, justice, impartiality and good faith”.*

Article 268 (citizens’ rights and guarantees)

- 1) *“Citizens have the right to be informed by administration, whenever they so request, as to the progress of the procedures and case in which they are directly interested, together with the right to be made aware of the definitive decisions that are taken in relation to them”.*
- 2) *“without prejudice to the law governing matters concerning internal and external security, criminal investigation and personal privacy, citizen also have the right of access to administrative files and records”.*
- 3) *“Administrative acts are subject to notification of the interested parties in the form laid down by law, and when they affect rights or interests that are protected by law, must be based on express and accessible grounds”.*

	<p>4) <i>“Citizens are guaranteed effective jurisdictional oversight of those of their rights and interests that are protected by law, particularly including the recognition of the said rights and interests, the impugnation of any administrative act that harms their rights and interests, regardless of its forms, the issue of positive decisions requiring the practice of administrative acts that are required by law, and the adoption of adequate provisional remedies</i></p> <p>5)<i>Citizens also have the right to challenge administrative norms which have external force and harm those of their rights or interest that protected by law”.</i></p> <p>6) <i>“For the purposes of paragraphs (1) and (2) the law shall lay down a maximum time limit for responses by the administration”.</i></p> <p>Article 271 (liability of public sector staffs and agents)</p> <p>1) <i>“the staff and agents of the state and of other public entities are civilly and criminally liable and subject to disciplinary proceedings for their actions and omissions in the exercise of their functions, and for any such exercise that leads to a breach of those citizens’ rights or interests that are protected by law, and no phase of any action or proceedings shall be dependent on authorization by higher authority”.</i></p>
Poland	Republic of Poland Constitution

Article 51

1. *“No one may be obliged, except on the basis of statute, to disclose information concerning his person”.*
2. *“Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state ruled by law”.*
3. *“Everyone shall have a right of access to official documents and data collections concerning himself. Limitations upon such rights may be established by statute”.*
4. *“Everyone shall have the right to demand the correction or deletion of untrue or incomplete information, or information acquired by means contrary to statute”.*
5. *“Principles and procedures for collection of and access to information shall be specified by statute.”*

Article 61

1. *“A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury”.*

2. *“The right to obtain information shall ensure access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings”.*

3. *“Limitations upon the rights referred to in paras. 1 and 2 above, may be imposed by statute solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State”.*

4. *“The procedure for the provision of information, referred to in paras. 1 and 2 above shall be specified by statute, and regarding the Sejm and the Senate by their rules of procedure”.*

Article 63

1. *“Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person - with his consent - to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statute”.*

Article 77

1. *“Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law”.*

	<p>2. <i>“Statutes shall not bar the recourse by any person to the courts in pursuit of claims alleging infringement of freedoms or rights”.</i></p>
<p>Luxembourg</p>	<p>Constitution of the Republic of Luxembourg Article 29 <i>“The law regulates the use of languages in administrative and judicial matters”.</i></p>
<p>Lithuania</p>	<p>Republic of Lithuania Constitution Article 25 <i>“The citizen shall have the right to obtain any available information which concerns him from State institutions in the manner established by law”.</i></p> <p>Article 30 <i>“A person whose constitutional rights or freedoms are violated shall have the right to apply to a court. Compensation for material and moral damage inflicted upon a person shall be established by law”.</i></p> <p>Article 33 <i>“Citizens shall have the right to participate in the government of the State both directly and through their democratically elected representatives, as well as the right to enter into the State service of the Republic of Lithuania under equal conditions. Citizens shall be guaranteed the right to criticize the work of State institutions or their officials, and to appeal against their decisions. Persecution for</i></p>

	<p><i>criticism shall be prohibited. Citizens shall be guaranteed the right to petition; the procedure for its implementation shall be established by law”.</i></p>
<p>Latvia</p>	<p>Republic of Latvia of Constitution</p> <p>Article 104</p> <p><i>“Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply. Everyone has the right to receive a reply in the Latvian language”.</i></p>
<p>Italy</p>	<p>The Italian republic Constitution</p> <p>Article 97</p> <p><i>“Public offices are organized according to the provisions of law, so as to ensure the efficiency and impartiality of administration. The regulations of the offices lay down the areas of competence the duties and the responsibilities of the officials. Employment in public administration is accessed through competitive examinations, except in the cases established by law”.</i></p> <p>Article 113</p> <p><i>“The judicial safeguarding of rights and legitimate interests before the bodies of ordinary or administrative justice is always permitted against acts of the public administration. Such judicial protection may not be excluded or limited to particular kinds of appeal or for particular categories of acts. The law determines which judicial bodies are empowered to annul acts of</i></p>

	<p><i>public administration in the cases and with the consequences provided for by the law itself”.</i></p>
<p>Hungary</p>	<p>Republic of Hungary Constitution</p> <p>Article 57(5)</p> <p><i>“In the Republic of Hungary everyone may seek legal remedy, in accordance with the provisions of the law, to judicial, administrative or other official decisions, which infringe on his rights or justified interests. A law passed by a majority of two-thirds of the votes of the members of parliament present may impose restrictions on the right to legal remedy in the interest of, and in proportion with, adjudication of legal disputes within a reasonable period of time”.</i></p> <p>The Fundamental Law of Hungary</p> <p>XXIV Article 2 (Freedom and Responsibility)</p> <p><i>1. Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to give the reasons for their decisions, as provided for by an Act.</i></p> <p><i>2. “Everyone shall have the right to compensation for any damage unlawfully caused to him or her by the authorities in the performance of their duties, as provided by an Act”.</i></p> <p>XXV Article 5 (Freedom and Responsibility)</p> <p><i>“Everyone shall have the right to submit, either individually or jointly with others, written</i></p>

	<i>applications, complaints or proposal to any organ exercising public power”.</i>
Germany	<p>Federal Republic of Germany Basic Law</p> <p>Article 103 (1)</p> <p><i>“In the courts every person shall be entitled to a hearing in accordance with the law”.</i></p>
Finland	<p>Constitution of Finland</p> <p>Section 17</p> <p><i>1.The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act... provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The right of persons using sign languages and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.</i></p> <p>Section 21</p> <p><i>“Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligation reviewed by a court of law or other independent organ for the administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by and Act”.</i></p>

<p>Estonia</p>	<p>Constitution of Republic of Estonia</p> <p>Article 14</p> <p><i>It is the duty of legislature, the executive, the judiciary, and of local authorities, to guarantee the rights and freedoms provided in the Constitution.</i></p> <p>Article 44</p> <p><i>(...) Pursuant to a procedure provided by law, all government agencies, local authorities, and their officials have a duty to provide information about their activities to any citizen of Estonia at his or her request, except for information whose disclosure is prohibited by law and information intended exclusively for internal use.</i></p> <p><i>Pursuant to a procedure provided by law, any citizen of Estonia is entitled to access information about himself or herself held by government agencies and local authorities and in government and local authorities and in government and local authority archives. This right may be circumscribed pursuant to law to protect the rights and freedoms of others, to protect the confidentiality of a child's filiation, and in the interests of preventing a criminal offence, apprehending the offender, or ascertaining the truth in criminal case. Unless otherwise provided by law, citizens of foreign states and stateless persons in Estonia enjoy the rights specified in paragraphs two and three of this section equally with citizens of Estonia.</i></p>

	<p>Article 46</p> <p><i>“Everyone has the right to address informational letters and petitions to government agencies, local authorities, and their officials. The procedure for responding to such letters and petitions is provided by law”.</i></p>
<p>Cyprus</p>	<p>The Constitution of the Republic of Cyprus</p> <p>Article 29</p> <p><i>1. Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decide expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.</i></p> <p><i>2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent court in the matter of such request or complaint.</i></p>
<p>Croatia</p>	<p>Constitution of Republic of Croatia</p> <p>Article 46</p> <p><i>Everyone shall be entitled to file petitions and complaints and to submit proposals to governmental and other public bodies, and to receive responses thereto.</i></p> <p>Article 93</p> <p><i>(2) “Everyone may lodge a complaint to the Ombudsperson if he/she deems that his/her</i></p>

	<p><i>constitutional or legal rights have been threatened or violated as a result of any illegal or irregular act by governmental bodies and the civil service, local and regional self-governmental bodies and bodies vested with public authority”.</i></p> <p>Article 146</p> <p><i>“Citizens of the Republic of Croatia shall be European Union citizens and shall enjoy the rights guaranteed by the European Union acquis communautaire, and in particular:</i></p> <p><i>(...)</i></p> <p><i>– the right to submit petitions to the European Parliament, complaints to the European Ombudsman and the right to apply to European Union institutions and advisory bodies in the Croatian language, as well as in all the other official languages of the European Union, and to receive a reply in the same language.</i></p> <p><i>All rights shall be exercised in compliance with the conditions and limitations laid down in the founding treaties of the European Union and the measures undertaken pursuant to such treaties”.</i></p> <p><i>“In the Republic of Croatia, all rights guaranteed by the European Union acquis communautaire shall be enjoyed by all citizens of the European Union”.</i></p>
Bulgaria	Constitution of Republic of Bulgaria

	<p>Article 7</p> <p><i>“The State shall be held liable for any damages caused by unlawful acts or action on the part of its agencies and officials”.</i></p>
Austria	<p>The Republic of Austria Constitution</p> <p>Article 18(1)</p> <p><i>“The entire public administration shall be based on law”</i></p> <p>Article 23(1)</p> <p><i>“The Federation, the Laender, the districts, the municipalities and the other bodies and institutions established under public law are liable for the injury which persons acting on their behalf in execution of the laws have by illegal behavior culpably inflicted on whomsoever”.</i></p>

Source: Fundamental Right Agency from

<https://fra.europa.eu/cs/eu-charter/article/41-pravo-na-radnou-spravu#national-constitutional-law>

2.7 Institutions for implementing good administration

2.7.1 Ombudsman

In 2003, the parliamentary assembly recommended that member states institute an Ombudsman at the national level, especially where it does not already exist. In the white paper, it was recommended that states adopt an individual right to good administration at the constitutional level, followed by the draft of a model text by the Committee of Ministers. They should adopt and implement code of good administration fully.

The recommendation from the assembly was that the committee drafts a model for an individual, comprehensive, consolidated model code of good administration, based on the Committee of Ministers Recommendation NO. R (80) 2, Resolution (77) 31 and the European Code of Good Administrative Behaviour (ECGAB), with the involvement of the right organs of the Council of

Europe (CoE) in consultation with the Ombudsman thus providing the basic right to good administration as to facilitate effective implementation. Article 43 of the CFR guarantees the Ombudsman the administrative right to investigate maladministration

2.7.2 GRECO

The CoE instituted the Group of States against Corruption (GRECO) to monitor member states against corruption and maladministration. It refers to the CM/ Rec No. R (2000) 10 code of conduct set out for public officials to evaluate their activities.

The group recommends a single text for a standard code of conduct. The group has approved a comprehensive assessment, conformity and period reports on its 49 member countries (Borlini, 2019). One of the main functions of the group is towards a civil service as well as anti-corruption base on good administration.

3 METHODOLOGY OF SURVEY AND RESEARCH METHODS

This chapter discusses the methodology adopted for the research. It outlines the aim and objectives of the research and presents in detail how the research was conducted. It presents the research approach and design, data collection and method, it discusses the case selection.

3.1 Research Approach and Design

To achieve the aim, purpose and objectives of this research work, a qualitative approach will be adopted. The qualitative research approach is about the research diving deep into a situation and striving to do reasonable thinking about it, and this could be during an interview or at organizational meetings. Bryman (2016) defines qualitative research strategy as that which emphasizes words rather than quantification in the collection and analysis of data in social research. Qualitative researchers carefully examine and take note of any small happenings that will help them to behave and make a careful decision about the context and generate inductive ideas (Tracy, 2012). Tracy further presents several strengths of qualitative research and these include: qualitative research is the best option for studying contexts that the researcher is more inquisitive about but does not have a valid reason for stepping into that field, qualitative research unfolds inherent issues that can be further studied by using the more structured method and it also suitable for accessing **tacit** because it creates an opportunity for the researcher to hear and witness what people do. As Taylor et al. (2015), argue that qualitative research by extension produces a description data from the subjects' own written or verbal words and observable behavior. The qualitative method is used when the researcher aims to understand the perspective of the research object or to explore the meaning of a phenomenon, thus the implementation of the good administration of the EU.

A study by Creswell (2010) postulates that in a qualitative approach the research builds larger knowledge claims predominantly based on diverse meanings from the experiences of the individual, historically and socially with of generating a theory or pattern. According to Myers (2012), qualitative research has a broad spectrum of methodological approach which entails other research methods. Social scientists developed qualitative research methods to enable researchers to have critical study cultural and social scenes. Sources of data for qualitative research are interviews, documents and texts, observation, fieldwork, archives and the research's self-reflexivity. Examples of qualitative research include ethnography, case study and action research.

It gives in-depth information about everyday life and helps to seek an understanding of every phenomenon being researched.

According to Mason (2002), it gives a much wide array of dimensions of the social world since the method used is a much more flexible one. Researchers can use their views and beliefs in a research project due to its flexibility.

3.2 Population and Sampling

Wilson (2010) defines population as the total number of cases from whom the study's sample is drawn.

Sampling is the process of selecting elements of a population which will be included in a research study. Sampling is used to represent a population in terms of confidence. The purposive sampling method will be used for the selection of data and case laws. Purposive sampling is a common sampling strategy.

3.3 Methods and Data Collection

The research employs the use of secondary data. Secondary data is a kind of data that for some reason has experienced some form of analysis and has indeed been gathered by some investigators which could be in any form such as journal articles, publications, newspaper reports periodical available case reports and government printed s (Wilson, 2010). Secondary data will be use used for research for which official documents, and transcripts will be used for the selected cases, and European Union official websites and published documents will be used. Policy documents, law cases documents as well peer-reviewed journals have been collected. for the analysis of the thesis.

The studies will employ a case study approach for the research. Yin (2014), believes that the case study's strength, when compared to other methodologies rests in its ability to explore a case depth within its real-life context to answer descriptive and exploratory questions such as what happened, how or why it happened. A case study technique enabled a researcher to create a qualitative narrative that explores intricacies in data in a real weal setting that would not have been exposed by a review of the research alone. Furthermore, being able to draw from a lot of sources, like documents, observations and interviews, provided for a more in-depth study. A case study considers a perspective of a group of people which constitutes the case of interest, situated within a wider surrounding setting

Document analysis is a type of qualitative research method where documents are used by the researcher through analysis. According to Bowen (2009), it consists of interpreting documents by the researcher to give meaning to the topic being assessed. O’leary (2014), sees it as “*a research tool for collecting, reviewing, interrogating and analyzing various form of written ‘text’ as a primary source of research data*”. There are three types of documents used during document analysis (O’Leary, 2014):

- Public records like students’ transcripts, mission statements, annual reports, policy manuals, student handbooks, strategic plans, and syllabi.
- Personal Documents: calendars, e-mails, scrapbooks, blogs, Facebook posts, duty logs, incident reports, reflections/ journals, and newspapers.
- Physical Evidence such as flyers, posters, agendas, handbooks, and training materials.

3.4 Case selection

A case study is the analysis of a single situation or case through analysis and description of social elements. Yin (1984) defines case study methods as “*an empirical inquiry that investigates a contemporary phenomenon within its real-life context: when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used*”. The research will focus on multiple case study designs where multiple events and sources of evidence are used for the research work.

In selecting the cases, the researcher selected proceedings, judgements, and opinions of the Court of Justice European Union (CJEU) and Advocate General opinions with the guide of journals from the EU official’s sites. Also, Court rulings from ECHR were considered since Article 6 falls within the remit and work in tandem with Article 41 of the Charter. Ensuring Article 6 of the ECHR means ensuring Article 41 of the Charter. These Cases were selected because they are profound cases that show how good administration is ensured.

3.5 Research Limitation

Qualitative research is heavily criticized because it focuses on a small population or case numbers, therefore, the key findings emanating from the study will provide insufficient evidence that is not testable for generalization to larger populations (Yin, 2009).

To prevent delimiting the weakness, data triangulation was used to double-check data use from other sources. Triangulation of data allows researchers to provide credibility to their work (Eisner, 1991). This is done to reduce bias that might exist during data collection. Triangulation helps prevent the research from bias such as research and respondent bias. Peer review was used in the collection of secondary data of the selected case laws for data reliability and credibility.

4 ANALYSIS OF RIGHT TO GOOD ADMINISTRATION

4.1 Good Administration in the European Union

The right to good administration enshrined in Article 41 of the Charter is a collection of rights and duties that create the right to good administration. Thus, the right to good administration is a group of rights rather than a standalone right. The question is always based on what rights or obligations should form part of the right to good administration since it varies in different legal administrative processes. The principle contains the following rights and obligations in Articles 41 and 42 of the Charter, a concept of good administration. These principles include.

- Impartial, and within a reasonable time (Article 41(1))
- To be heard (Article 41(2))
- access to one file (Article 41(2))
- State reasons (Article 41 (2))
- access documents (Article 42)

Good administration is based on the following core principles:

- Lawfulness
- Non-discrimination
- Proportionality

Lawfulness is a core principle of EU administrative law and is guaranteed in most of EU Member State. It is more of a general principle governed by statutes under the Member States constitution. The principle of lawfulness is usually formulated in member states' constitutions as administrative procedure acts.

Issues of discrimination and partially has been a major issue in EU law. One of the main reasons, the principle of Non-discrimination is guaranteed in almost all Member states constitutionally. The principle requires guidance in the proper handling of matters based on a principle of sound administration.

The principle of proportionality is mostly accepted principle in national case law. As discussed in chapter one of the work, the principle consists of three steps: suitability, necessity and balancing. One of the notions of proportionality is primarily to protect citizens and the Member State by

imposing limits on its powers. An example is the case of *The Queen v Fedesa (C-331/88)* the court held.

“In accordance with the principle of proportionality, which is one of the general principles of Community law, the lawfulness of the prohibition of an economic activity is subject to the condition that the prohibitory measures are appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question, it being understood that when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.”

The court stated that the measure must be suitable and essential and that both need and proportionality must be considered. Proportionality is important in an administrative decision; it poses a challenge in decision making when implementing national law and Union law seems to be in conflict. Article 52 (1) of the Charter, *“limitation may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.”* Proportionality is employed in cases where limitations are applied to the law. Thus, to avoid a conflict in implementing EU laws, like the right to freedom of expression and the right to data protection.

In the principle of necessity, the following must be considered

- whether a valid goal justifies the interference with the protected interest.
- measure in question is acceptable for attaining the legitimate aim
- the measure does not transcend what is necessary to achieve the legitimate aim

Proportionality serves as a key principle under administrative laws and case law. It requires a fair balance of individual or persons’ rights and the public interest.

4.2 Administrative and Procedural law

Administrative procedure is established legislation which an administrative action must follow. Some steps should be carried through some steps for procedural law to take shape. According to SIGMA (2012), *“a pre-establish decision-making procedure is essential to any complex organizations if their activities have to be controlled internally and externally, which is particularly crucial if an organization deals with public interests”*. The rights of public administrations should be guaranteed by procedural law. Administrative procedures are significant

because they provide an experiential set of regulations governed by an association. They also help show the legality of operation action by assuring the operation of management rules and decisions is done in an ideal, fair, and consistent manner. Eventually, they help ensure that administrators are held responsible for decisions that diverge from the proceedings.

Administrative procedures are based mainly on legality, transparency in public decision-making, and openness. Administration procedures are developed well in developed countries but absent in weak or developing countries.

The Research Network on EU Administrative Law (**ReNEUAL**) is an organization that addresses and simplifies EU administrative law to implement the Union policies between the institution of the Union and the Member States. The body has created an administrative procedure model code that member states can adopt. The project's main objective is to improve the way EU laws are implemented as a whole (Harmonized). The model rules are drafted to be adopted as an EU regulation possibly where it uses an innovative codification approach. This is when existing principles scattered across different laws, regulations and court case laws are brought together into one document. Administrative procedures as developed in the model concerning good administration (Article 41) and effective remedy (Article 47) require fairness, impartiality, timeliness, and the possibility of claiming damages against public authorities in discharging their work and duty.

4.2.1 Model Code of administrative procedure

The Model was developed by a group of scholars of various EU member states within in 2014. It was a codification of administrative procedures rules for the EU. The ReNEUAL Model rules is a proposed draft of administrative procedural law for binding legislation designed for the best practice of different policies of the EU. The ReNEUAL aims at providing an arrangement for existing law, by filling loose ends by providing innovative ways where there are no rules or principles for citizen protection. It is to help reinforce the general principle of the Union law. The administrative model codes are designed in different ways for administrative procedures of institutions, bodies and agencies of the EU. The model as indicated is to provide a single framework for all i.e., public administrations, citizens and businesses. The framework or structure is to improve the implementation of EU law. The model aims to find ways constitutional values of the EU can be translated into code on the administrative procedure that covers the implementation

of Union policies and laws. It is designed to help member states find an appropriate way to adopt this code as a Union law. The code brings together existing principles scattered across different laws, regulations and court case laws into one document an innovative codification approach. it was to enhance transparency and improve the efficiency of administrative action.

The main objective of the model ode on administrative procedural law is to produce a way on how the Union law implementation can be improved. The code was provided to ensure values from CFR and the TFEU are respected and not an abstract concept.

Administrative action is required at all Union laws and policy phases when implementing administrative procedures. This is to ensure that administrators discharge their duties effectively and individual rights are protected. The model is designed to include the principle of legality, proportionality, transparency, openness and protection of citizens' rights. Model sought to address the implementation of covering non-legislative part of the Union law and policies on constitutional values can be translated into administrative procedures. This is to build a relationship between the Union's administrative level and the national level. The codification of an administrative procedure is to simplify the legal system and compliance with the rule of law. Where there is clarity, effectiveness, and transparency in the legal obligation of administrators and rights of individuals.

EU administrative procedural laws cover the implementation of the Union law and policies on the non-legislative process and not only constitutional values and principles on which the Union is based. The administrative procedure that is produced by the model tries as much as possible to bring harmonization of the Union's administrative laws and national laws together. One challenge to developing administrative procedures is that not all member states have adopted good administrative principles into their statutory or constitutional laws. Also, there are gaps in regulation which leads to procedural elements being addressed partially within policy-specific rules. Administrative procedures are still fragments within the Union laws and member states' laws, leading to a lack of transparency, predictability and confidence. Administrative procedures are multi-jurisdictional by nature where there are many actors involved in its procedures. The administrative procedures are taken by only a one-sided actor but rather all bodies involved in the process. Nevertheless, there is still fragmentation in implementing administrative procedures by bodies due to the lack of general procedural rules at the Union level approach to procedural laws

at Member State's authorities. There is an existence of different codifications of administrative procedures at national levels. Administrative procedures are based on adversarial principle, procedural economy, *dubio pro actione*, official impulse, and Impartiality.

The adversarial principle is where both parties must be equal in the procedure irrespective of the administration position. It is linked to the right to defense and the obligation to hear interested parties before coming out with a resolution.

Public administration is requested to act promptly and efficiently. In the procedural economy interpretation of rules must be distinguished as essential and non-essential steps, and the legal consequences that follow when not complying with administrative procedures by authorities. Procedures should continue in case of doubts until there is a final resolution to the issue known as the *in dubio pro actione*. The CoE and the Ombudsman CGAB provide how officials should work and conduct themselves, which is a key principle in administrative procedural law. The principle of impartiality is a fundamental procedural law whereby citizens should be respected and not discriminated against again. The EU parliament tasked the European Commission to provide a proposal on an administrative procedure based on the recommendation. The Commission failed to implement the request of the Parliament

4.3 The right to fair and impartial handling of affair

Some member states constitutionally guaranteed the right to have a fair and impartial hearing. Impartiality and fairness are linked to the principle of equality. As stated in Article 4(1) of the Charter, the wording of the article is to make sure that officials do not portray a sense of partiality against persons when exercising discretionary powers. Impartiality has been described in Article 8 of the ECGAB, where an individual has the right to an impartial official. The code defines how officials should conduct themselves when dealing with individual cases.

Some member states have adopted these cases into their constitutional administrative procedures. In the Czech Republic Administrative procedure act section 14:

“According to Section 14 of the Administrative Procedure Act, an official shall be disqualified when her or she: (1) is a participant in proceedings upon which the administrative proceedings in question have an impact (e.g., bankruptcy proceedings, criminal proceedings etc.), (2) has a direct material or other personal interest in the arrangement of the case, and is thus positively motivated

towards a positive or negative result of the proceedings, (3) a person close to the worker has such an interest in the arrangement of the case, (4) has a familial or close relationship to the participants in the proceedings or to their representatives, (5) is representing the participant in the given case, (6) is directly subordinate to or superior to the participant in the proceedings or the representative thereof within a working relationship, (7) demonstrates a conspicuously hostile approach to the participant in the proceedings or to persons close to the participant to such an extent that there is a probability that this hostility will have an influence on the worker's objectivity”.

Article xxiv (1) of Hungary's Constitution states: “Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to give the reasons for their decisions, as provided for by an Act”. Article 97 of the Italian constitution states: “Public offices are organized according to the provisions of law, so as to ensure the efficiency and impartiality of administration(..)”. Both laws require public administration to treat citizens fairly and impartially when handling them.

How civil servants must act in impartiality matters has been described in Article 11 of the CGAB which states “*the official shall act impartially, fairly and reasonably*”.

The principle of fairness requires that every individual be treated impartially without discrimination, as in *European Court of Auditors v Karel Pinxten (C-130/19)*. In the case “*Mr Pinxten was a Member of the European Court of Auditors from 1 March 2006 to 30 April 2018, completing two terms of office. During his terms of office, he was assigned to Chamber III of that institution, which is responsible for auditing EU expenditure on external relations, blowup and philanthropic aid. From 4 April 2011 until the end of his final term of office, Mr Pinxten held the office of Dean of Chamber III. After entering a favourable opinion from the commission responsible for assessing the external conditioning of the Members of the Court of Auditors, Mr Pinxten was authorised, by decision of 30 April 2015, to take up the part of President of the Stichting Behoud Natuur en Leefmilieu Vlaanderen (Flemish Foundation for Nature Conservation and the Environment, Belgium) (SBNL-V). During his terms of office, Mr Pinxten was handed with a sanctioned auto and an energy card allowing energy for that auto to be charged to the Court of Auditors. He also entered two fresh energy cards at his request. Between 2006 and March 2014, the Court of Auditors handed Mr Pinxten with a motorist. From April 2014, Mr Pinxten could request a motorist assigned to the ‘pool of motorists’ under the responsibility of the Director of*

Finance of the Court of Auditors to be made available. In addition, during his terms of office, Mr Pinxten entered payment of representation and event charges, colorful charges incurred in the course of operations authorized, at his request, by the President of the Court of Auditors and payment of diurnal subsistence allowances in respect of those operations”.

The right to be heard is a fundamental human right that is enshrined in both the ECHR and the CFR. Wording found in the article defines the right as a definite administrative procedure that must be guaranteed by the Member States. Individuals must be allowed to have an impartial hearing before any decision is taken against them which will affect them later. The right as worded in Article 41(2)(a) of the Charter should be measured in the interests of the individual.

In paragraph 167 of the court findings, it stated that “*alleged infringement of Mr Pinxten’s rights of defence, Article 41(2)(a) of the Charter provides that the right to good administration includes the right of every person to be heard before any individual measure which would affect him or her adversely is taken*”. The right to be heard always work along with the right to defense as noted in the first wording in the paragraph. Every individual must have a right to be heard on facts that affect their case. Administrative bodies or institutions provided them with opportunities to examine their cases and evaluate them to ascertain relevant and correct facts involved with the case. Just as it was argued in point 206 of the case “*that being said, Article 41(1) of the Charter provides inter alia that every person has the right to have his or her affairs managed impartially by the institutions, bodies, offices and agencies of the European Union*”. The Court in its findings stresses the importance of one affair being managed in impartially by the Union bodies without bias as enshrined in Article 41 of the CFR and Article 6(1) of the ECHR. The court concluded that there was no breach of good administrative principles once the institutions in question were satisfied and covered the needed information. It is essential for institutions working within the Union law to implement good administration procedures before making decisions. In the code of conducts and code of good administrative behavior, how institutions and bodies when working within the scope of the union have clearly been defined, and it is incumbent for institutions to implement it to avoid maladministration and breach of the Charter. For this reason, the Court found no breach or violation by the Court of Auditors in the decision in this matter. In the anti-competition case “*Zeigler v Commission (c-439/11)*”, where the Commission discovered the addressee (“Zeigler”) was involved in cartel and price-fixing in its business model. The

Commission concluded that the arrangement of the addressee was a distortion of competition. The Commission imposed a fine on “Zeigler” which appealed the decision.

The Court, in its finding, stated that there is no violation of good of principle of good administration by the commission. Commission took precautionary measures before punishing Zeigler. It can be noted that the right to act impartially is to be enjoyed by individuals before and during administrative proceedings. To increase integrity, objectivity, and transparency in proceedings independent body or person must be entrusted with conducts of administrative proceedings

4.3.1 Access to one’s file

The right to access one’s file is an administrative and democratic right in article 41 2(b) ensuring public administration accountability and transparency. It’s important as established in chapter 2 of the research, implies public authorities should make sure that the individual’s data are well protected. Article 255 (2) EC, Regulation 1049/2001 and directive 95/46/EC mention how one’s file must be accessed and protected. Access to information is considered an administrative and fundamental right guaranteed constitutionally in some member states. Article 37 of Estonia Administrative Procedures, establishes that:

“1. Everyone has the right, in all stages of administrative proceedings, to examine documents and files, if such exist, which are relevant in the proceedings and which are preserved with an administrative authority.”

It is also the obligation of for authorities to protect individual information as guaranteed in the Charter (right to Secrecy and data protection). The Estonia Administrative Procedure Act provides individual data/information protection, which is prohibited by legislative acts. Portugal (**Article 271**) and Poland (**Article 51**) have included access to one file and document in their constitutional framework. According to Craig (2014), before or after an administration takes a decision, applicants can make a request to challenge the decision of judicial outcome. As access allows applicants to be able to put counterarguments when challenging the judicial review. **Schenken AG v Commision** (T-534/11), the air freight company requested access to documents from the Commission that was refused. The commission stated that granting Schenker access to the file will be undermining ongoing proceedings in the court. The Court on its findings rejected claims from Schenker AG to have access to their file. The air freight argument that the commission was

required under good administrative principle was not deemed a fundamental right. The court acknowledges the exceptions where files or documents cannot be granted. However, the court concluded that nothing prevented the Commission from providing a non-confidential version of the file to the claimant.

When working within the scope of the Union law, administrative authorities cannot exercise discretionary exercise and withhold non-confidential documents it considered of no interest to the part concerned. Access to one file is an administrative procedural right which is enjoyed by citizens even if no formal proceeding has not started.

4.3.2 The obligation to state the reason for the decision

In the application of good administration, it is important for institutions, bodies and organs implementing EU law to state the reason for every decision taken. The duty to state reason which is enshrined in Article 296 TFEU states that “*legal act shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendation, requests or opinions required by the Treaties*”. This wording found in the TFEU is in Article 41(2)(C) of the Charter.

The principle of non-discrimination applied in relation to the duty to state reason is evident in the case of *Georges Paraskevaïdis v European Center for the Development of Vocation Training (Case T-601/16)*, where Mr Paraskevaïdis filed a complaint against Cedefop on the issue of breach of misadministration. In paragraph 36 of the Court rulings, it observed:

“In that connection, it must be recalled that, according to settled case law, the obligation to state reasons laid down by Article 25, second paragraph, of the Staff Regulations, which merely repeats the general obligation enshrined in Article 296 TFEU, is intended to provide the person concerned with sufficient information to assess the merits of the act adversely affecting him and the opportunity to bring an action before the courts of the European Union and second, to enable the latter to review the legality of the act (see judgments of 29 September 2005, Napoli Buzzanca v Commission, T-218/02, EU:T:2005:343, paragraph 57 and the case-law cited; of 3 October 2006, Nijs v Court of Auditors, T-171/05, EU:T:2006:288, paragraph 36 and the case-law cited; and of 13 September 2016, Pohjanmäki v Council, T-410/15 P, not published, EU:T:2016:465, paragraph 77 and the case-law cited). It follows that the obligation to state reasons is an essential principle of EU law, which may only be derogated from for compelling reasons (judgments of 29 September 2005, Napoli Buzzanca v Commission, T-218/02, EU: T:2005:343, paragraph 57;

of 3 October 2006, Nijs v Court of Auditors, T-171/05, EU: T:2006:288, paragraph 36; and of 4 July 2007, Lopparelli v Commission, T-502/04, EU: T:2007:197, paragraph 74). That obligation, which is an integral part of the principle of proper administration, as is clear from Article 41(2)(c) of the Charter of Fundamental Rights, the importance of which was strengthened after the entry into force of the Lisbon Treaty by the insertion of Article 15(1) and Article 298(1) TFEU. An open and effective European administration must scrupulously comply with the provisions of the Staff Regulations. In particular, the reasoning of any act adversely affecting staff of the European Union is a necessary condition for ensuring a peaceful working environment in the European Union administration, avoiding giving rise to the suspicion that the management of its personnel is based on arbitrary considerations or favoritism”.

Again paragraph 64 of the judgement states:

“ Such an approach would enable the appointing authority to rely on any negative assessment of a candidate not promoted and of which he was informed in order to avoid its obligation to inform him of a reasoned decision rejecting his complaint, deriving from Article 90(2), second paragraph, of the Staff Regulations and which constitutes a specific expression of the requirement to give reasons for any decision adversely affecting an official laid down in Article 25, second paragraph, of the Staff Regulations and the right to good administration guaranteed by Article 41 of the Charter of Fundamental Rights”.

In its judgement, the Court indicated the Cedefop did not apply all administrative principles in Article 41 of the Charter and did not give the reason for the rejection of his promotion. The court on accessing this Annul the decision of the director of Cedefop for not promoting Mr Georges Paraskevaidis and ordered them to pay for compensations to him. As established in Article 41(2)(c) of the Charter, the duty to state reason is an important fundamental right that every citizen must enjoy. Reasons must be given why a decision was taken. In rejecting Mr. Paraskevaidis promotion, the institution erred in following administrative procedures guaranteed by the Charter. Administrative bodies must provide reasons for decisions taking. The CJEU argued through its findings that:

“Since the contested decision is vitiated by a failure to state reasons and must be annulled on that ground (see paragraph 72 above), it must be held that the General Court is not in a position to assess its substance following an examination of its grounds (judgment of 29 September 2005,

Napoli Buzzanca v Commission, T-218/02, EU: T:2005:343 paragraph 99). It must be recalled in that regard that one of the purposes of the statement of reasons is specifically to enable the Courts of the European Union to exercise a review of the legality of the acts before it (see paragraph 36 above)”.

The Court, in its finding, stated that the decision must be annulled due to the failure to state reason by the director. However, the Court stated its position is not to assess the substance involved in the examination.

4.3.3 Damage against the Union institution

The right to have the Union make good any damage has been established in Article 41(3) of the Charter. This principle has also been established in Article 340 TFEU which cites “*the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties*”.

In the “*Somoriai v Hungary*” CJEU of judgement stated that the lack of time in which the ruling was made cannot be seen as arbitrary. However, there was a violation of Article 6 (1), the right to a fair trial as enshrined in the Conventions and the length of the proceedings exceeding a reasonable time. The Court established:

“(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage.

(ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses.

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points”.

The court orders the applicant to be paid 15,000 EUR regarding non-pecuniary damage. This is stated in Article 41(3) of the Charter of Fundamental Rights which states that damaged caused by the Union institutions or its staff during their duty should be duly paid. Once the Court establishes there was a breach of the superior rule of law in the protection of the individual, it is important to award for the damages caused. Where the EU legislation is infringed, like the principles of law such as legal certainty, proportionality, and impartiality.

4.3.4 Right to receive a response in an official language

Article 41 (4) mentions the right citizens enjoy in writing institutions of the Union and receiving answers in the same language they have written which is a guaranteed right. Article 20(2)(d) TFEU and 21 EC confers this right to citizens of the Union. Among the twenty-three official and working languages of the Union citizens or individuals writing to Union institutions and organizations must receive their answer in the same language their request was made. The right to receive a response in an official language has been provided in Article 29 of the Luxembourg constitutional, which states:

“The law regulates the use of languages in administrative and judicial matters”.

The Latvia constitution article 104 ensures *“Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply. Everyone has the right to receive a reply in the Latvian language”* and Section 17 of the Finnish constitution also states: *“The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act... provisions on the right of the Sami to use the Sami language before the authorities are laid down by an Act. The right of persons using sign languages and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act”.* Citizens’ trust is built when they can communicate with public administration in an official language and have their requests in the same language. It reduces the sense of partiality among individuals.

4.4 Challenges of ensuring the right to good administration

The scope right to good administration of the Charter is enshrined in article 51 of the Charter as discussed in the previous chapter. The scope draws a clear line of understanding that the provision of the Charter only affects the EU institutions, bodies and personnel or staff when working with Union law. Thus, on the other hand, when member states act outside the scope or field of the Union law, member states or national laws are not under any obligations to apply the Charter.

Implementation of Union law in national laws has become difficult to which most scholars refer to it as uncertainty, and with different opinions on its interpretation. Even after the Lisbon treaty became legally binding on the Member States, there were still deficiencies in the interpretations. The ECJ acts as a driving force in interpreting good administrative power as a principle of EU law allowing Member States to exercise it in applying EU law. In the case of *Harisch v Germany (Application no. 50053/16)*, the applicant requested a referral of her civil proceedings to the CJEU. The applicant raises the concern of the German court's refusal to refer to the Court of Justice for failure to provide adequate reasoning for that refusal. In point 39 of the ruling of the Court, it pointed out that under the established case law of the Federal Court of Justice and Federal Constitutional Court, it's only appropriate to apply to the matter for interpretation only when it holds a "fundamental significance" and thus the matter hand was not and that was the reason for its refusal to refer the request of the applicant to the CJEU. The further Court stated that in point forty-two of its ruling "*Taking into account the purpose of the duty of the domestic courts to provide reasons under Article 6 of the Convention (see paragraph 33 above) and examining the proceedings as a whole, the Court notes that the domestic courts provided the applicant with a detailed explanation why the requested referral to the CJEU had been refused. Notwithstanding the fact that the Federal Court of Justice was the court of last resort within the meaning of Article 267 of the TFEU, the Court considers that in the specific circumstances of the present case it was acceptable that the Federal Court of Justice dispensed with providing more comprehensive reasoning and merely referred to the relevant legal provisions when deciding the applicant's complaint against the refusal of leave to appeal on points of law*".

The court observed that once the federal court was not implementing the Union law, it was in no way violating Article 6 of the Convention of Human Rights. Thus, the national court did no wrong in its decision. Moreover, reason, the court dismissed the cases stating, "*there has been no violation*

of Article 6 of the Convention". The wording has brought an understanding that the right to good administration does not reach the Member States but is an internal right of the Union. Obligation as stated in Article 41 does not apply to the Member States when they implement EU law it targets institutions, bodies as well as organs of the Union (Dutheil de la Rochere, 2008). In the case of "F.F(F.F), N.P(N.P)ir A.P (A.P.), v Migration Department under the Ministry of Interior of the Republic of Lithuania" (A-5129-415/2018), where the migration department refused the application temporary residence permit on the claim that the company which he provided to be a shareholder is fictitious. Upon dismissal of his complaint at the Vilnius Regional Administrative Court, the applicant submitted an appeal to the Supreme Administrative Court to contest the decision.

On point forty-three of its ruling, the court observed that "*the principle of sound administration also includes the right to be heard. However, this right is not an end in itself. On the one hand, it seeks to ensure the right of a person to provide the public administration with all the information he or she considers relevant and thus to ensure the protection of his or her rights. On the other hand, it seeks to ensure that, before taking an individual decision, the public authority has established all the relevant factual circumstances necessary to take such a decision, since otherwise the legality and reasonableness of such a decision would be called into question*". The principle of good administration only works when citizens and institutions work together. Decisions can be taken by an administrative body when not working with national laws and not EU law and thus there is no collusion of both laws. Member States are left to decide how they apply the law according to Union law, known as the procedural anatomy. According to Reichel (2008), when cases fall within the scope of the Union law member states are required to apply the procedural laws in different ways to ensure effective rights as guaranteed by the general principle of the EU law. Good administrative procedural laws are not ensured when the right level of protection or procedures is not applied. Member states are to follow procedural rules only when it falls within the scope of good administration.

The duty to give a reason is important to establish a clear linkage of trust among individuals in the administration acting correctly without bias. According to Nogaj (2012), the duty to state reasoning reduces unnecessary litigation has been taken. It should be noted that the obligation to state reason is necessary and also in line with Article 41(2) of CFR. Article 41 like any rights stated in the

Charter is a fundamental right, the scope defined is narrower compared to the whole Charter. Since the obligations stated are not directly conferred on Member State but only when they implement Union law.

4.5 Protection of Citizen rights'

One of the aims of good administrative law is to protect citizens vis-à-vis the actions of the states. Article 41 provides tools that help individuals invoke when dealing with public authorities. According to Kansa (2004), citing the objective of the Charter is to strengthen the fundamental right of the citizen and member state laws. The principle of impartiality, openness, transparency, right to be heard, access one's file and be giving a reason within a reasonable time as enshrined in article 41 can be relied upon by citizens especially in their relations and dealings with public authorities as in the case *Mr. Georges Paradiavits v Codefop*. As much as good administration is not imposed on member states as an obligation, citizens' right to good administration should not be dismissed. The Advocate General Hogan opined in the *European Court of Auditors v Karel Pinxten* paragraph 93:

“However, this condition of impartiality naturally also applies to the EU institutions by virtue of the right to good administration as provided for in Article 41 of the Charter. It follows that the possibility of recusal therefore necessarily applies to decisions taken by the ECA, especially in the context of administrative proceedings initiated against persons and likely to result in decisions adversely affecting them”.

AG argued that the condition of impartiality also applied to EU institutions when dealing with Union laws. He also warns against the conflict of interest in applying state administrative proceedings against a person as stated by the CoE codes of conduct and the Union CGAB. In paragraph 128:

“It is clear that, as provided for in Article 41 of the Charter the right to good administration includes, on the one hand, the right of every person to be heard, before any individual measure which would affect him or her adversely is taken and, on the other hand, the right of every person to have access to his or her file”.

Not only should citizens' rights regarding Article 41 of the Charter be respected, but enough time should be considered to ensure it does not have adverse effects on them when decisions are taken.

Administrative bodies are highly required to exercise discretionary power in decision making. Good administration builds and ensures confidence by citizens that their matter will be appropriately managed and without bias.

4.6 Applicability on the right to good administration

The right to good administration, as stated in the scope of the charter (Article 51) applies to the Member States when the Union is implemented. The right to good administration is a general principle of the Union law. Member States once working within the scope of the Union law must apply the Charter. The scope needs to coincide with the general principles of the Union law for it to be applied effectively. According to Kristjansdottir (2012), member states should not be relieved of the duty to apply good administration as a general principle.

Applying a good administration process should be considered especially in administrative decisions that affect a person's interests. The AG in his opinion in "*M.M v Minister for Justice, Equality and Law Reforms and Other (C-2277/11, 2012)*" paragraph 32: "*The right to be heard must be applicable in any procedure which may culminate in a decision of an administrative or judicial nature adversely affecting a person's interests. Observance of that right is required not only of the EU institutions, by virtue of Article 41(2)(a) of the Charter, but also, because it constitutes a general principle of EU law, of the authorities of each of the Member States when they adopt decision falling within the scope of EU law, even when the applicable legislation does not expressly provide for examining an application for international protection followed by the competent national authority in accordance with the rules adopted in the framework of the common European asylum system*". Authorities need to adopt and ensure decisions fall within the scope of the Union law, and that the right of the person concerned is taken into account. The court in its interpretation in paragraph 82 stated the provision of the fundamental right which the applicant must enjoy under Article 41(2) (right to be heard, access one's file, state reason). Member states should be careful not to interpret national law in a manner that conflicts with the fundamental right provided by the EU laws (para 93). Thus, referring to good administration in administrative decisions is a fundamental right. Member states when applying the right to good administration are expected to conform to certain administrative standards. Application of the Union law and national administrative procedural rules are not uniform. Member states administration applies administrative rules with less consideration of the Union law when working outside the scope of

the charter. It the complex nature that makes it hard for national law to be implemented effectively. In decision making, the procedural autonomy of member states and principle of primacy must consider that requires complex assessment in national administrative proceedings.

5 FINDINGS AND DISCUSSION

As established in Article 41 of the Charter, the right to good administration has issues and unbridged gaps. In as much as, the Charter has guided in protecting the rights of citizens within the Union there are still challenges faced by the good administration. Another issue is the integration of CFR, especially with administration rights in some member states into their national administrative law. This chapter will turn to the research question and provide answers to the data analyzed.

5.1 Research Question Revisited

The three main questions which were posed at the beginning of the research work were to ascertain first how Article 41 truly guarantees good administration within member states; Challenges of ensuring good administration in member states: How does the right to good administration protect citizen right in member states.

5.2 How does Article 41 of the Charter guarantee good administration

Article 41 of the Charter formulates good administration as a fundamental right by stating the right of every person to have their affairs managed without impartiality or discrimination. In applying administrative law in the Union, the individual must be placed at the implementation center. Good administration should be based on the principle which serves as the fundamental for the activities of administrative bodies. Article 41 CFR is subjective law; it still gives a clear understanding of when institutions, bodies and organs apply Union law. The right aims to provide efficiency in administrative procedures and build confidence in public administrations.

As established in Article 6 ECHR the objective of the Charter is again to strengthen the protection and implementation of the rights. Failure to apply the good administrative principle leads to poor or maladministration, leading to dissatisfaction among citizens. It seeks to impose a duty on administrative bodies, institutions, and organs providing tools that citizens can rely on if they feel maladministration has been applied. Batalli (2012), to achieve citizens' trust, public administration should be considerable, liable and responsive towards its citizens. Based on the principle of fairness, openness and transparency Article 41 of the Charter is not on only the procedures alone but also on the substance of decision. The right to a fair hearing (Art. 41(1)) is ensured when officials are not biased in their exercising of discretionary powers. Attention has been giving to

impartiality by the soft administrative law provided in the ECGAB on the conducts of officials. Article 11 (ECGAB) provides on the acts of officials in their acts in terms of good administrative decisions. Reasonable time in dealing with administrative issue is also important in good administrative procedure. As opinion by Soderman “*slow administration can be considered to be a bad administration*”. Failure to act in time can be regarded as a form of maladministration by claimant (“*Omdahl v Norway*”) and applicants can seek for interpretation at the Court. A delay is mostly not as established an annulment, rather in some exception it is up to the court to determined based on the reason provided. Speedily handling of one’s affair is most connected to principle of due diligence and legitimacy. Speedy action is not important to good administration, but necessary to sound administration and justice.

National administration is to ensure the smooth running of administrative decisions at the national level. In member states, administrative cooperation is only possible when competent individuals are ready to carry out actions to support, coordinate or supplement the Union administrative law. Good and quality administration running in the Union institution can only be possible or regulated at the Union level. Non-compliance with the Union administrative procedural rules is due to the different legal traditions in member states. This poses a risk to good administration in the Union. According to Wilbrant-Gotowicz (2018), “*adopting EU procedural rules with the right of priority, which are not set in the legal tradition of the national administrative procedural may cause problems both in respect of the appropriate implementation of EU acts and their application by nation administration authorities.*” Provision of implementing Union law should be guaranteed in member states application; not just complaint with regulation but also structures that provides solutions in the integration in national administrative procedures too.

Right to good administration as previously established consists of a collection of rights and duties. The model code as established is not only applicable at the EU level but also in member states. Some member states have procedural laws that are also present at the national level and also at institutional levels.

One of the challenges faced in the adoption of the administrative level of the EU Model Code is difficulties in applying by national administration officials. Fair handling of one’s affair impartially is constitutionally guaranteed in some member states. Some member state also has the right to fair handling in their statutory, administrative procedure Acts. As provided in the ECGB on the conduct of officials, officials should work impartially without bias. How officials should

handle themselves have been laid down in some member states' legislations and left out in others. The Slovakian Administrative Procedure Act 9(1), Administrative Procedure Acts Latvia Article 14: requires officials with an interest in a case to abstain from a case they were involved in earlier.

In some member states, the court is to determine if there is a conflict of interest or a violation ("*European Court of Auditors v Karel Pinxten*"). There are various ways decisions can lead to maladministration due to the "personal interest" of the officials. The Finish Administrative Procedure Act 28(1) states official should be disqualified once he/she is a close person to a party involved in the matter. Article 28 of the Spanish Administrative Procedure defines "Personal interest" to include consultants, legal representatives, and attorneys. Whiles the definition of the conduct of officials are not clearly defined in terms of personal interest in the ECGB and the CoE codes of conduct, some member states go further to restrain officials who involve in earlier proceeding from taking part in cases law of the same issue. Administrative Procedure Acts of Estonia 35(4) and Slovakia 9(2) make provision for preventing such officials.

At the Union, the administrative level right to access an individual file is defined in the Charter of Fundamental law Article 41,42. Regulation 1049/2001 and directive 95/46/EC state how citizens' files should be accessed and protected. Access to one's files is stated in statutes rather than constitutionally. Administrative proceeding regarding how files can be accessed is laid down by most of the member states as administrative procedure act. Provisions are made on exceptions on files and documents that can be accessed and those that can't. This provision is to adhere to the administrative proceeding of access to one file it also adheres to confidentiality and misuse of the file by applicants. These exceptions are to prevent applicants from abusing their rights and using them to cause damage.

Administrations and institutions in member states are expected to state the reason for their decisions. Article 41(2(C)) of the Charter requires member states to give reasons in court proceedings or administrative proceedings. Obligation to state reason can be found in administrative laws of some member states. All member states have different ways of expressing this administrative right conferred on individuals by the Charter of the Union. Article 58(2) of the Austrian Administrative procedure Act stipulates that parties involved should be provided with a reason for a decision once there are no contradictory issues brought up by any party. In some

member states, it is not obligatory to give a reason in all matters (“*Harisch v Germany*”). Oral reasons are also accepted in some member states.

5.3 Challenges of Ensuring good administration in the Member States

Good administration as enshrined in article 41 is not directly conferred on member states when not applying the Union law. As defined in the scope of the Charter institution of the member states are only obliged to apply the wording of good administration as enshrined in the Charter. As discussed in section 2.3 of the research, national authorities and bodies are not under any obligations when acting outside the scope of the Union. Kristjansdottir (2014), the Charter, explanatory notes do not explain the difference in scope applying to the right to good administration due to the doctrine of procedural autonomy, which allows states to decide how implementation will take place.

These limits placed on the scope are to assure member states consider the principle of good administration in national procedures that involve the use of the Union law. The scope of good administration limits how it is applied to only institutions and bodies of the European Union. This limitation allows Member States to implement their laws disregarding the good administration enshrined in Article 41 of the CFR especially when national procedural rules do not ensure a satisfactory level of protection.

The breach of administrative right does not necessarily mean an annulment of the case as in the case of “*Omdahl v Norway*” (*Application no. 46371/18*), the Court stated, that it does not see a violation even when the proceeding of the case has taken too long (Article 41(1) “reasonable time”) and the court did not err in its previous decision. The Court in this case did not annul the previous verdict. Clement (2018), “*a mere breach of one step in the administrative procedure does not contaminate the whole procedure if some further steps could compensate the breach*”. National Courts and institutions are charged with taking Union laws in combination with national laws and rules. It is easy for Member states to consider national laws before the Union law or make a decision on their own as in the case of “*Harisch v Germany*”. An example is the Court’s refusal to provide reasons for its refusal to refer the matter to the CJEU. As discussed in the literature, member states are not obligated to apply Union laws when working outside of it (Groussot, Pech & Petursson, 2012).

One must prove when good administration procedure is not observed. The principle of good administration is not strong to confer rights that individuals can force to embark on. This happens mostly in access to documentation or files, reasonable time and use of official language. The line

between which document should be granted by public administration on files, and documents is difficult to determine. Access to a file and protecting data is a huge burden on officials and institutions. Officials must decide on the confidentiality of the work. Access to files or documents as enshrined in Article 41 does not an automatic right guaranteed to citizens. Determination of rights is applicable in cases where the EU institutions are involved. In decision making other rights have less impact on member states. Rights as official languages, time limits. Time limit is an issue in national administrative cases. As Court cases are stuck between cautious and quick handling of a case. Cases as such are left to the court to decide whether” reasonable time” was exceeded. In most cases is hard to determine. The scope of Article 41 on good administration does not apply to purely national administrative proceedings outside the Union law. Member State institutions are required to help enforce the Union administrative laws.

5.4 How does good administration protect citizens’ rights in member states?

Good administration is based on the legal procedural right that can be found as part of Resolution (77) 31 on the protection of individuals in correspondence with the right to be heard, access information, representation, and state reason. The ECGAB, CM/Rec (2007)7, and the Resolution (77), which member states must adopt contain codes that help promote good administrative procedure concerning the rule of law and democracy. Good administrative right is a group right based on law. This code is set on the principle of equality, impartiality, lawfulness, legal certainty, transparency, proportionality, respect for privacy and acting within a reasonable time.

As established in chapter 4 (3) of this research, the right to the good administration of citizens should not be dismissed by the Member States. Therefore, member states and staff should provide citizens with a reason for every decision taken as in the case of “*Harisch v Germany*” discussed in the previous chapter. The right to administration as enshrined in Article 41, demands impartial, to fair hearing and handling of affairs in a reasonable time, access to one’s files and well as the obligation to give a reason for decisions and get replied in any of the official EU languages. Article 17 of ECGAB, request how staff should conduct themselves to prevent maladministration. According to Wakefield (2007), the right to administration necessitates administrators acting per legal requirements, and providing individuals with protection through implementing laws that can be employed regarding administrative entities. Cuculoska (2018), affirms what conditions should

be met for its administration and the scope to fall short. National administrations are required to enforce the Union laws at the nation level. Providing and adhering to good administrative measure base on the principle of proportionality it important in building trust among citizens. As noted, most member states have also provided a national administrative procedural code which helps guide administrative procedures, public administrators and institutions in decision making. The model code which was provided by the Union is to also help member states in adopting good administration implementation. Member states that have adopted a code of administrative procedure in their administrative acts are capable of providing an efficient proceeding. Good administrative procedures are based on legality, proportionality, transparency and openness which requires public administrators to adhere when apply administrative law. This is to help put citizens' rights at the center of administrative procedure at the same time balancing the rule of law on them. Rights of citizens are protected when administrative procedures are handled impartially and fairly by administrative authorities as defined in Article 41(1) of the Charter. Efficiency is mostly guaranteed in enacting speedy administration by public administration. As defined in model administrative codes, bringing scatter principles of sound administration increases the protection of citizen administrative rights. Most member states have some aspect good administration defined in their administrative acts, statutory or constitutional framework to enable the protection of citizens' rights. Citizens can have access to court for interpretation, when their rights have been infringed upon. This is a guarantee that administrative authorities are observing the law.

When member states include administrative acts into national laws or frameworks, the right to good administration is guaranteed to the member states. When government and institutions are held accountable in decision making, it reduces maladministration and increases citizens' confidence.

6 RECOMMENDATION AND CONCLUSION

6.1 Recommendation

Based on the findings of this research, the following recommendation should be adopted by the EU, member states as well as researchers in the field of right to good administration.

1. Regarding further research into this field, the need for harmonization of administrative procedural law in member states and Union levels should be done.
2. The European Commission recommendations on the adaptation of good administration by member states should be ensured and adopted by all member states in their constitutional framework.
3. Lastly, to improve and increase the confidence level of citizens and the public, the principle of lawfulness, proportionality and non-discrimination must be adhered to by member states. This thesis recommends, member states strengthen institutions, and official's accountability and transparency by ensuring the Ombudsman's at the national level is not interfered.

6.2 Conclusion

Good administration is an important fundamental human right that should be enjoyed by individuals in European Union. One of the objectives of good administration is to provide citizens or individuals of the Union with support and build confidence in administrative bodies and institutions. This can be achieved through fairness, lawfulness, non-discrimination, proportionality, openness, and transparency. To achieve good administration procedures. The objective of EU good administration is for member states to adopt most administrative procedures into their constitution and bring harmonization. Another objective is for the right to be a legally binding principle but a regulation that is enforced by the member states of the Union.

This research aims to analyze good administration as guaranteed to EU citizens by Article 41 of the Charter through case law. To achieve the aim, the research first reviews scholarly reviews to establish a theoretical background on the right to good administration: concepts of good administration, institutional framework, code of good administrative behaviour, conduct and examination of article 41 of the Charter and its application in Members States laws (National Laws).

The analysis of good administration in the EU was based on the theoretical background The use of qualitative case study methodology was employed to obtain the aim of the research.

The research found the following during the analysis:

Firstly, the right to good administration as guaranteed is subjective base on the principle of lawfulness, non-impartiality, proportionality, and impartiality. The right to good administration is based on many rights on EU administrative rights and principles. Good administration is a fundamental right that everyone enjoys. As a subjective law must be place at the center of administrative law when implementing administrative procedures. Article 41 is based on the principle of equality, legality and proportionality. The principle of legality is to make check the administration does not divert good administration. The aim of the good administration right is to provide efficient administrative procedure and build confidence in public administration. Code of Conduct and the ECGAB has provided guidelines for the public officials in conducting themselves. Article 41(1) of the Charter, provides rights on good administrations as everyone should have their affairs handled fairly and impartially, speedy action, access to one file, fair hearing, payment of damages and language neutrality.

Secondly, there is work and research to be done on the good administrative procedure at the national level and the Union level. The model procedural which seeks to help harmonize good administrative processes have not been fully adopted. This is also due to the various different type of administrative law of member states. This limitation allows the Member States to implement their laws disregarding the good administration enshrined in Article 41 of the Charter even when national procedural rules do not ensure a satisfactory level of protection as (*“Harisch v Germany”*). Right to good administration as defined in Article 41 only works when member states are implementing the union law. The scope of article 41 has narrowly been defined in the charter as compared. The right to good administration is not directly conferred on member states unless working within the scope of the Union laws. Article 41 contain an open list of rights; it leaves some decisions to the Court in adding some principle in good administration cases. The court is still responsible for interpretation of Article 41.

Finally, good administrative law aims to protect citizens vis-à-vis the actions of the states. Article 41 provides tools that help individuals to invoke when dealing with public authorities. Good administration is not imposed on member states as an obligation but citizens' right to good administration should not be dismissed. National level of most of Member States have good administrative procedures stated in statutory their statutory law and there is a conflict of either

applying the Union law or national. Member states with good administrative acts enacted as part of their constitutional framework, administrative act or statutes are less likely to apply sound administration in proceedings compare to those without any administrative acts.

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8 APPENDICES

Appendix 1:

Table 2 Recommendations of the Council of Europe

Recommendation	Description
Recommendation No. R (80) two	Exercise of discretionary powers by administrative power
Recommendation No. R (81) 19	Access to information by public authorities
Recommendation No. R (84) 15	Public liability
Recommendation No. R (85) 13	On the institution of the Ombudsman
Recommendation No. R (87) 16	Administrative procedures affection large number of persons
Recommendation No. R (89) 8	Provisional court protection in administrative matters
Recommendation No. R (91) 10	Communication to third parties of personal data held by public institutions
Recommendation No. R (91) 1	Administrative sanctions
Recommendation No. R (93) 7	Privatization of public undertakings and activities
Recommendation No. R (97) 7	Local public services and the rights of their users
Recommendation No. R (2000) 6	On the status of public officials in Europe
Recommendation No. R (2000) 10	Codes of conduct for public officials
Recommendation Rec (2001) 9	Alternatives to litigation between administrative authorities and private parties
Recommendation Rec (2003) 16	Execution of administrative and judicial decisions in the field of administrative law

Recommendation Rec (2004) 20	Judicial review of administrative acts
Recommendation CM/Rec (2007) 7	Good administration
Recommendation Rec (2003) 16	Administrative and judicial decisions in the field of administrative law

Source: Author's own