

The Role of the European Ombudsman in the Implementation of the Right to Good Administration

Professor Ion Popescu-Slăniceanu, PhD

The National School of Political and Administrative Studies, Bucharest
ionpopescu55@yahoo.com

Diana Marilena Petrovszki, PhD in progress

The National School of Political and Administrative Studies, Bucharest
diana.petrovszki@gmail.com

Cosmin Ionuț Enescu, PhD in progress

The National School of Political and Administrative Studies, Bucharest
enesucosmin@yahoo.com

Abstract: The regulations and general conditions of the exercise of the Ombudsman's functions are determined by the European Parliament after receiving the Commission's opinion and the approval of the Council. Many of the complaints addressed to the European Ombudsman relate to administrative delays, lack of transparency or refusal of access to information. Some relate to labor relations between European institutions and their agencies, staffing, and the procedure of hiring. Others are related to contractual relations between European institutions and private firms.

Keywords: European Ombudsman; European Union; human rights

In 1992, the Maastricht Treaty envisaged the establishment of the institution of the European Ombudsman. Its considered mission was to improve relations between European citizens and European institutions and bodies and to highlight the European Union's commitment to promote democratic, transparent and accountable governments. The European Ombudsman exercises an administrative control mechanism similar to that which allows for the control of public authorities at national level by the Ombudsman in most states (Alexandru, Gorjan, Ivanoff, Manda, Nicu, & Săraru, 2005, p. 121).

Under Article 228 (1) of the Treaty on the Functioning of the European Union (article 195 (1) of the Treaty establishing a European Community)¹, the European Parliament appoints an Ombudsman from among distinguished professionals, citizens of the European Union. The person appointed shall have full civil and political rights and offer every guarantee of independence.

Furthermore, that person must meet the conditions required for the exercise of the highest judicial office in their country or have the acknowledgment competence and experience to undertake the duties of the Ombudsman². The Ombudsman is appointed after each election of the Parliament, for the duration of a full term, with the possibility of reappointment.

The Ombudsman exercises his/her functions independently. His/her independence is guaranteed by the incompatibility with other functions or activities and by the fact that his/her financial status is the same as that of a judge of the Court of Justice of the European Union. From this perspective, his/her independence is confirmed by the guarantees provided for by Articles 12 to 15 and 18 of the Protocol on privileges and immunities³.

The regulations and general conditions of the exercise of the Ombudsman's functions are determined by the European Parliament after receiving the Commission's opinion and the approval of the Council⁴.

The Parliament's decision from 1994⁵ provides for the the regulation and general conditions of the Ombudsman's functions. These functions are fulfilled in accordance with the powers conferred to it by the treaties of the European institutions and bodies, the ombudsman having no possibility to intervene in any

¹ Consolidated Version of the Treaty on the Functioning of the European Union art. 228, para. 1, 2008 O.J. C 115/47 [hereinafter TFEU]; The Treaty Establishing the European Community, Rome, March 25, 1957, entered into force on January 1, 1958, consolidated version published in the Official Journal C 325/33 from December 24, 2002 [hereafter EC Treaty].

² These conditions are provided for in article 6 para. 2 of the European Parliament Decision 94/262/ECSC,EC,Euratom, March 9, 1994 on the Regulations and General Conditions Governing the Performance of the Ombudsman's duties, 1994 O.J. L 113, p. 15-18.

³ Protocol No 36 on the privileges and immunities of the European Communities (OJ L 152, 13.7.1967, p. 13), as amended by the Treaty of Nice (OJ C 80, 10.3.2001, p. 1).

⁴ Consolidated Version of the Treaty on the Functioning of the European Union art. 228, para. 4, 2008 O.J. C 115/47 [hereinafter TFEU] (Consolidated Version of the Treaty Establishing the European Community, supra note 2, article 195 para. 4)

⁵ The Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, supra note 3, modified through the Decision of the Parliament of March 14, 2002, published in the O.J. L 92 from April 9, 2002.

proceedings pending before a court. Furthermore, the conditions under which the Ombudsman ceases to exercise his/her function and the replacement procedures for early termination are also regulated at the EU level. The Ombudsman may be dismissed by the Court of Justice of the European Union at the request of the Parliament, if he/she fails to fulfill the necessary requirements of the function or in case of serious fault¹.

It is important to also refer to the obligation of the European institutions or bodies to provide any information requested by the Ombudsman and to facilitate access to the files needed for further investigation², unless there are significant reasons for secrecy.

If the Ombudsman considers the complaint to be justified and establishes the presence of maladministration, he/she has the ability to inform the institution concerned, which can then take all necessary measures to solve the problem. Such problems are called "problems solved by the institution".

When the Ombudsman finds a case of maladministration but the problem is not resolved during the investigation, the Ombudsman shall seek a "friendly solution" to satisfy the request of the EU citizen.

If this is unsuccessful, he may submit a "recommendation project" to the institution, requesting it to take the necessary steps to remedy the case of maladministration. If the institution does not accept the recommendations, the Ombudsman may send a "special report" to the European Parliament.

If an amicable solution and a remedy for the case of maladministration cannot be found, the Ombudsman may send a "critical review" to the institution concerned. In any case, the Ombudsman must inform the person who made the complaint about the outcome of the investigation.

Many of the complaints addressed to the European Ombudsman relate to administrative delays, lack of transparency or refusal of access to information. Some relate to labor relations between European institutions and their agencies, staffing, and the procedure of hiring. Others are related to contractual relations between European institutions and private firms.

¹ Article 228 para. 2 TFEU ("Treaty on the Functioning of the European Union") (article 195 para 2 EC ("Treaty Establishing the European Community")).

² This obligation is provided for by Article 59 para 2 of the Romanian Constitution which states that public authorities have the obligation to provide the Ombudsman with the necessary support in the fulfillment of its functions

Therefore, the citizens of EU Member States have the right to submit a complaint to the European Ombudsman with respect to cases of maladministration in the institutions, bodies or agencies of the European Union.

Under Art. 43 of the European Charter of Fundamental Rights¹, any EU citizen, as well as any natural or legal person residing or having its registered office in a Member State, have the right to refer to the European Ombudsman, cases of maladministration in the institutions, bodies, offices or agencies of the Union, except the Court of Justice of the European Union exercising its jurisdictional functions (Alexandru, Gorjan, Ivanoff, Manda, Nicu, & Săraru, 2005, p. 121) (Albu, 9/2007, p. 82).

In carrying out its functions, the European Ombudsman cannot investigate complaints relating to national, regional or local maladministration in the EU Member States.

Since the establishment of the institution, the European Ombudsman has tried to define maladministration, based on the jurisprudence of the Court of Justice of the European Union, on principles of European administrative law and by drawing inspiration from the national laws of Member States containing provisions relating to requirements of good administration².

¹ In December 1998, at the anniversary of 50 years from the proclamation of the Universal Declaration of Human Rights, the Council of Europe decided to launch the work on a Charter of Fundamental Rights, work which was to be concluded before 2000. The Council concluded that the fundamental rights protected at the EU level must be incorporated in a Charter, making the rights and freedoms more transparent to the European citizens. The Charter is established on the Treaties of the Community, on international treaties including the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and on the European Social Charter of 1989, on the common constitutional traditions of the member states, as well as on the various declarations of the European Parliament.

The document clearly states that its scope is to protect fundamental rights with respect to the activity carried out by the institutions of the European Union and by the member states, in applying the provisions of the treaties of the European Union.

The European Charter of Fundamental Rights (2000/C364/01) was adopted by the European Parliament, the Council and the Commission through the solemn proclamation of December 7, 2000, at Nice. The Charter is published in the Official Journal C 303 from 14/12/2007, p. 1–16

² Thus, in art. 103, the Spanish Constitution states that public administration objectively serves the general interests and acts according to the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, being fully subject to the law and justice, while art. 61 of the Polish Constitution states that citizens have the right to obtain information about the activities of public authorities and about people exercising public functions.

These examples from different Constitutions, as well as the references to the judgments of the European Court of Human Rights in relation to the principles of legality, proportionality, effective

The definition of „ maladministration” proposed by the Ombudsman in the annual report submitted in 1997, resulting from the investigation of cases of maladministration in actions of the EU institutions and bodies, was that "maladministration is present when a public body fails to act in accordance with a rule or a principle which is binding for him. "

The European Parliament accepted this definition and adopted a resolution calling upon the Ombudsman to apply it when a case of maladministration has occurred, in order to respect citizens' right to good administration.

Regarding maladministration, we note that the Committee of Ministers of the Council of Europe considered that maladministration results from public administration's inaction, but also from delayed action, or from action inconsistent with their obligations, aspects which need to be resolved according to appropriate procedures, judicial or not (Albu, 10/2007, p. 68).

As for proper administration, it was defined, in theory, as a fundamental principle of administration, which requires appropriate delegation of powers at each level, with a clearly defined indication of the mode of exercise of such powers at the respective level (Vinod, 2000, p. 16) (Catană, 2009, p. 58) an important role in achieving this being played by the empowerment of the civil society and its involvement in the act of government (Kiran, 2000, p. 164) (Catană, 2009, p. 58).

As noted in the literature, the right to proper administration is a relatively recent formulation in the European political and legal instruments. In the legal doctrine (Alexandru, Gorjan, Ivanoff, Manda, Nicu, & Săraru, 2005, pp. 120, 124, 168) the right to proper administration is being expressly and explicitly enshrined in the European Charter of Fundamental Rights and in the Recommendation CM / REC (2007) 7 of the Committee of Ministers of the Member States of the Council of Europe referring to a good administration, whose annex contains the Code of Good Administration¹.

control of administrative acts and to the enforcement by the administrative authorities of judicial decisions, principles governing the proper administration are found in the article prepared by E. Albu called "The Principles of the Right to a Good Governance in the Jurisprudence of the European Court of Human Rights", incorporated in the paper " Modern administrative law - towards a unified concept in Romanian doctrine and practice", under the supervision of Emil Balan, Cristian Iftene, Gabriela Varia and Marius Văcărelu, published by Comunicare.ro, SNSPA, The Faculty of Communication and Public Relations, Bucharest, 2008, p. 126-143

¹ The Recommendation CM/Rec(2007)7 was adopted by the Committee of Ministers on June 20, 2007 at the 999-th/bis, The Reunion of the Delegation of Ministers of the Council of Europe Member States.

With respect to the legal nature of the right to good administration, it has been noted in the doctrine (Alexandru, Gorjan, Ivanoff, Manda, Nicu, & Săraru, 2005, p. 128) that it represents "a complex legal institution with the legal nature of a fundamental right and a general content including a variety of attributes regarding the organization and functioning of the administration, recognized as independent rights".

In relation to the state, this right is manifested as an amount of obligations the state has with respect to the organization of public administration, as well as with regard to its functioning in accordance with the law and in the interest of public administration beneficiaries.

In the preamble of the above-mentioned recommendation of the Committee of Ministers of the Council of Europe, good administration is defined as a component and one of the conditions of proper governing (Catană, 2009, p. 60) not limited to legal ways of expression. Being determined by the quality of the organization and management of structures and resources, good administration must meet the requirements of efficiency, efficacy (Alexandru, Gorjan, Ivanoff, Manda, Nicu, & Săraru, 2005, p. 174) and adaptability to the needs of society. Furthermore, it must ensure the maintenance, safeguarding and protecting of public property and public interests and must respect budgetary requirements and eliminate any form of corruption (Albu, 10/2007, p. 68).

The right to good administration is protected by Article 41 of the European Charter of Fundamental Rights. Thus, art. 41 paragraph 1 of the Charter, which defines the right to good administration, provides that any person is entitled to receive impartial and fair treatment from the institutions, bodies, offices and agencies of the European Union, as well as a prompt answer to any requests.

According to art. 41 para. 2, the right to good administration includes, in particular:

- everyone's right to be heard before any decision which might prejudice him/her;
- the right of every person to have access to his/her file, while respecting the legitimate interests of confidentiality and professional and business secrecy;
- the obligation of the administration to motivate its decisions.

In accordance with Art. 41 para. 3 of the Charter, any person is entitled to compensation for damage caused by the European Union institutions or by its

agents in carrying out their duties, in accordance with general principles common to the laws of the EU member states.

Also, in accordance with Art. 41 para. 4 of the Charter, any person may write to the Union institutions in one of the languages of the Treaties and must receive an answer in the same language.

Encouraging the right to good administration, the European Ombudsman contributes to the strengthening of the relations between the EU and its citizens.

This process was crowned by the drafting of a "European Code of Good Administrative Behaviour", which is addressed to European citizens and officials. Firstly, the code informs people about what to expect from the administration. Secondly, it informs European institutions and bodies, their administrations and officials, of principles that must be complied with during their activities.

The Ombudsman based its proposal for such a code on the provisions of the Treaty of Maastricht which explicitly introduced the concept of "openness", adding that "This Treaty marks a new phase in the the process of bringing the citizens of Europe closer, where decisions are taken in a manner more transparent and closer to its citizens"¹.

Therefore, the Ombudsman found that in order to bring the administration closer to the citizens and in order to ensure a high quality administration, a European Code containing the basic principles of conduct of the European civil servants in relations with citizens, is needed.

In order to be clear and not cause confusion among the public, the Code had to be construed as a document containing only the rules governing the relations between the public and officials, making no reference to relations between civil servants of the EU institutions, as it was foreseen in the draft of the document "Code of Conduct applied to the European Commission"².

Furthermore, it has been noted that such a code must be the only one for all EU institutions, in order to make it clear and accessible to the public.

¹ Article 1 of the Treaty of the European Union or the Maastricht Treaty, signed on February 7, 1992, entered into force on November 1, 1993, published in the O.J. C 191 from July 29, 1992.

² At present, the relations between European civil servants with respect to conduct are regulated by the Statute of the European Civil Servants, adopted through the Regulation (CE, EURATOM) nr. 723/2004 of the Council from March 22, 2004 amending the Staff Regulation of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, published in the Official Journal L 124 from April 27, 2004, pp. 1-118

By reference to the position of the European Commission, the White Paper adopted by the institution, on March 1, 2000, has highlighted the key principles of a European public administration focused on service, independence, accountability, efficiency and transparency.

The Administration of the European Union is in the service of some 456 million of European citizens. The respect of the rights of citizens of the European Union Member States must be the leitmotif of the action of the European Commission to achieve the target of the EU, namely peace, prosperity and the unity of peoples who compose it.

Hence, it is clear to the Commission that its staff, in exercising its functions, has a main duty to ensure a high quality public service to Union citizens.

In this spirit, on September 6, 2001, the European Parliament decided to adopt the European Code of Good Administrative Behaviour applicable to the relation between its staff and the public¹.

The role of the European Code of Good Administrative Behaviour is, on the one hand, to promote transparency and consistency of administrative action and, on the other hand, to ensure uniform application of its rules and principles in the activity of all EU institutions and bodies (Albu, 9/2007, p. 82). To this end, the Code sets out the principles on which to build relations between the Commission and the public: legality, non-discrimination, proportionality in implementing administrative decisions in relation to its objective, no abuse of power, impartiality, independence, consistency and continuity of administrative behavior (Albu, 9/2007, p. 82).

The European Code of Good Administrative Behaviour covers, as shown, only the rules to be followed by civil servants in dealing with European citizens, as well as the procedure of receiving, recording, responding and the resolution and notification of decisions taken in order to solve the demands of citizens.

The code defines its area of application, stating in Article 1 that its provisions apply to the relations between the public and the European officials, as well as those between the public and the agents, which are regulated by the Statute of the European Civil Servants.

¹ Minutes of the European Parliament Session from 3 to 6 September 2001, OJ C 72E/331, 21.3.2002; The final text of the Code of Good Administrative Behavior is available on the European Ombudsman web-site, at <http://www.ombudsman.europa.eu/resources/code.faces>.

Under Article 2, Section 4 (b) of the Code, the term officer refers to "an official or other agent of the European Communities.

In accordance with Article 1a, a civil servant as envisaged by the Statute, refers to any person who has been appointed in accordance with the provisions of the statute, for a permanent office in one of the institutions of the Union, through a written instrument of the body which has the authority to appoint civil servants for the respective position.

The definition given in paragraph 1 applies equally to the persons¹ appointed by the European bodies regulated by the Statute in accordance with their laws of establishment.

Unless otherwise provided for by the Statute:

- a) the Economic and Social Committee
- b) the Committee of the Regions
- c) the Ombudsman of the European Union and
- d) the European Data Protection Authority are assimilated to the EU institutions, in order to comply with the statute.

With respect to the material area of application, the European Code of Good Administrative Behavior is restrictive, limiting the application of its principles to relations between European institutions and the public, clearly stating in Article 3 that relations between the institutions and civil servants regulated by the Statute.

The European civil servant² must act in accordance with legal provisions, applying all rules and procedures contained in the European legislation, ensuring in particular that decisions affecting the rights and freedoms of citizens comply with legal provisions and with their objective³. When taking a decision, the civil servant must respect a proper balance between individual interests and public interests.

The civil servant must show objectivity in the decision making process considering all relevant factors, giving each of them its corresponding share in the decision making process, disconsidering any irrelevant element. Restricting citizens' rights or imposing constraints must always be avoided if these are disproportionate to the

¹ These are known as "agents" and the European bodies are known as "agencies"

² The personnel must act objectively, impartially, in the interest of the Union and in the interest of the society

³ According to the provisions of art. 4 of the European Code of Good Administrative Behaviour

aim of the respective action¹.

Article 5 of the European Code of Good Administrative Behavior provides the provision of non-discrimination and that "in dealing with the requests emanating from the public and in the decision-making process, the civil servant shall ensure the principle of equality. Members of the public who are in the same situation should be treated the same way", while any differential treatment must be justified with solid arguments, drawn from relevant objective characteristics of the respective case.

Paragraph 2 of Article 5 completes the list of issues which do not justify discrimination between citizens with the following elements: race, color, ethnic or social origin, genetic features, language, difference of opinion, membership of a national minority, birth, disability.

The European Code of Good Administrative behavior refers in Art. 7 to the obligation of European civil servants to not abuse the power of their functions. The powers conferred on them must be used to achieve the aims of their functions, avoiding their use for purposes not based on law or public interest.

In other words, the public servant is entitled to exercise a public office as long as he/she understands that the public office represents a duty. Any other criteria for failure to fulfill this duty lead to lack of credibility." (Parlagi, 1999, p. 18)

The professionalism of civil servants can be defined as the sum of all values which must compose their conduct in exercising their public functions: fairness, neutrality, transparency, timeliness, conscientiousness, efficiency, impartiality, to which country-specific values may be added.

European officials, according to Article 12 of the Code of Good Administrative Behavior are required to be fair, courteous and approachable in their relations to the public.

Impartiality is the ethical value that civil servants must use in their actions, judgments and opinions and in respecting citizens' equality before the law.

In accordance with Article 8 paragraph 1 of the Code of Good Administrative Behavior, the European Union civil servant „is impartial and independent. He shall refrain from any arbitrary action that might harm members of the public, as well as from any preferential treatment, independent of the reasons”.

¹ According to the provisions of art. 6 of the European Code of Good Administrative Behaviour.

The European Code of Good Administrative Behavior provides procedures for the receipt, recording, response, resolution and notification of decisions taken in solving requests from citizens, the procedure for the protection of information and personal data contained in their complaints or requests for information on different aspects relating to the legislation or the activities of the European institutions or on certain documents.

With respect to the replies to correspondence, telephone calls and electronic mails¹, the public servant must be helpful, and the answers to questions must be as accurate and complete as possible.

To the extent that the public servant is not able to answer a specific question he/she must refer the citizen to the competent civil servant.

The civil servant is required to correspond with the citizen in the official language of the European Union chosen by the citizen in his/her letter to the institution, and if possible, this applies to legal persons, associations and companies as well.

Any letter or complaint to the institution is subject to an acknowledgment of receipt² within 2 weeks, unless a substantive reply can be finalized within this period.

In accordance with Article 14 of the Code, the response or acknowledgment of receipt indicates the name and phone number of the civil servant who deals with the file, as well as the institution to which the civil servant belongs.

If a letter or a request made to an institution is addressed to a general body, to a department or unit that is not competent to handle the case, it is obliged to immediately forward the request to the responsible institution.

The body initially receiving the letter or request must inform the requesting citizen of the forwarding of his letter and of the name and telephone number of the officer to whom his request has been forwarded¹.

¹ The management of the internal and external electronic mail of the European Commission, for example, is performed using the administrative software called Adonis. This software provides all the necessary facilities – respecting the rules of data protection - recording, accessing information recorded, their designation and the security of internal and external mail.

The software allows the civil servant to sort out official letters received in different categories according to the date of receipt, subject and recipient. It also allows for the distribution of letters. This enables the finding of the information that identifies the unit or person to whom the document is addressed. The sorting out function allows the ranking of documents by keyword or by file.

² According to the provisions of art. 14, para. 3, „Sending a receipt confirmation and an answer is not necessary if the letters or requests are too many or if they are repetitive or unappropriate”.

The public servant informs the citizen or the association of the errors or omissions in sent documents, offers them the possibility to correct them and if a decision which affects the rights or interests of the citizen is taken, he is given the right to insert written comments or to make oral submissions, before the decision is taken².

The public servant shall ensure that a decision regarding a request or complaint to the institution is taken within a reasonable time frame, without delay, and in any event, not later than two months from the receipt of the request or complaint³.

If, due to the complexity of issues raised in the request or complaint to the institution, the latter cannot decide within the aforesaid time frame, the civil servant shall inform the author as soon as possible. In this case, the author will be informed of the final decision as soon as possible⁴.

Any decision of the institution with respect to the rights and interests of an individual must be reasoned, stating the relevant facts and legal basis for the decision.

If a detailed reasoning of the decision is not possible, due to the large number of people subject to similar decisions, standard answers will be sent, but the civil servant will assure the citizen that he will also be provided with an individual reasoned response based on individual criteria and judgments, if the citizen requires such an answer.

Any decision of the institution that adversely affects the rights or interests of an individual must contain an indication of the existing means of appeal for challenging the decision, as well as the bodies to which the appeal must be addressed, the time frames for appeals and the possibility to address a complaint to the European Ombudsman⁵.

The civil servant ensures that decisions affecting rights and interests of citizens are sent in writing to the person concerned, once the decision has been made.

The civil servant abstains from communicating the decision to other sources, if the person or persons concerned were not informed.

¹ According to the provisions of art. 15 of the European Code of Good Administrative Behaviour

² According to the provisions of art. 16 of the European Code of Good Administrative Behaviour.

³ The same rule applies to the response to the letters sent by the public, as well to the answers to the administrative notes which civil servants address to their superiors, asking for instruction on the decisions to be taken.

⁴ According to the provisions of art. 17 of the European Code of Good Administrative Behaviour.

⁵ According to the provisions of art. 18 of the European Code of Good Administrative Behaviour.

The civil servant who deals with personal data, must, during his actions, respect the privacy and integrity of the citizen, in accordance with Regulation (EC) 45/2001 of the European Parliament and the Council, from December 18, 2000, on the protection of individuals in connection with the use of personal data by European institutions and bodies and the free movement of such data.¹

The civil servant avoids in particular, illegal dealing with personal data and unauthorized transmission of data to third parties.

In settling claims for information coming from the public, the civil servant provides the public with the required information, advising citizens on initiating an administrative procedure under the civil servant's area of competence. He makes sure that the information provided is as clear as possible.

If the oral request is too complicated or too long, the civil servant may ask the person to submit an application in writing.

If, for reasons of confidentiality, a public servant cannot disclose the information requested, he/she indicates to the person concerned, in accordance with Article 18 of the Code, the reasons why he cannot communicate such information.

Following a request for information which the civil servant is not empowered to provide, the civil servant guides the applicant to the competent person, indicating his/her name and telephone number. If the requests for information address another European institution or body, the civil servant guides the applicant to that institution or body².

The civil servant deals with requests for access to official documents in accordance with the rules adopted by the institution and in accordance with the general principles and limits laid down in Regulation (EC) 1049/2001³.

If the civil servant does not have access to official documents due to the fact that only an oral request has been made, he/she shall inform the citizen of the need for the application to be made in writing.

The services of the institution maintain a register with all correspondence sent and received and all actions taken.

¹ Published in the O.J. L 8/1, January 12, 2001.

² According to the provisions of art. 22 of the European Code of Good Administrative Behaviour

³ Published in the O.J. L 145/43, May 31, 2001.

The fulfillment of the above mentioned obligations constituting proper conduct to be followed by European civil servants in carrying out their duties, leads to credibility and public confidence in the integrity of civil servants and in their ability to remain objective in dealing with petitioners. The image of public authorities to which public servants belong depends on the appropriate conduct of civil servants.

The proper application of the Code by the Commission's staff has been monitored since November 1, 2000, the date of its entry into force, in order to identify the strengths and deficiencies found in its application.

As it has been rightly pointed out in the literature (Albu, 9/2007, pp. 89, 90), starting from the European Ombudsman's definition of the term "maladministration" it must be noted that, broadly speaking, any violation of the rules and principles of the Code of Good Administrative Behavior may be a case of maladministration.

Moreover, according to art. 26 of the Code, "any disrespect by an institution or a civil servant of the principles established by this Code will be the subject of a complaint addressed to the European Ombudsman in accordance with Article 228 TFEU ("Treaty on the Functioning of the

European Union") (article 195 EC ("Treaty Establishing the European Community") and the Statute of the European Ombudsman.

The European Code of Good Administrative Behaviour is even more necessary as the "right to good administration" is entered in the European Charter of Fundamental Rights, which brings together in a single text, all European citizens' fundamental rights¹. These rights are found in various legal documents such as the Treaty establishing the European Community, or in the jurisprudence of the European Union Court of Justice.

Similar provisions to those of the European Code of Good Administrative Behaviour are contained in the Code of Good Administration adopted by the

¹ The European Charter of Fundamental rights provides for 3 categories of rights:

- civil rights and the right to justice, guaranteed by the European Convention on Human Rights, adopted by the Council of Europe;
- political rights which derive from the European citizenship established by the Treaties ;
- economic and social rights which include the rights established by the European Charter of Social Rights of Workers, adopted on December 9, 1989 at the Strasbourg summit of the heads of state and government of member states, in the form of a declaration.

Committee of Ministers of the Member States of the Council of Europe through Recommendation CM / Rec (2007) 7.

The Code of Good Administration includes the principles of administration, rules concerning the legal status of administrative acts and of administrative remedies against administrative acts, as well as provisions concerning national governmental obligations to compensate for damages caused by their unlawful acts, by public authorities' and civil servants' culpable conduct.

Since on January 1, 2007, Romania became a full member of the European Union, the knowledge and application of the provisions of the two codes, namely the European Code of Good Administrative Behaviour adopted at EU level and the Code of Good Administration adopted by the Council of Europe, become even more important.

We are convinced that the fundamental right to good administration will be included in the Romanian Constitution, during the next revision, and that regulations of an administrative nature (hopefully the Code of Administrative Procedure will be adopted) would include principles and rules of good administration envisaged by the two European codes to which we have previously referred to (Albu, 10/2007, p. 49).

Bibliography

Albu, E. (9/2007). The European Charter of Fundamental Rights – the Right to a Good Administration. In *Commercial Law Review*.

Albu, E. (10/2007). The Recommendation CM/REC (2007) 7 of the Committee of Ministers of the Member States of the Council of Europe and the Right to Good Administration. In *Commercial Law Review*.

Alexandru, I., Gorjan, I., Ivanoff, I. V., Manda, C. C., Nicu, A. L., & Săraru, C. S. (2005). *European Administrative Law*. Bucharest: Lumina Lex.

Catană, E. L. (2009). *The principles of good governance. European Evolutions and Comparative Studies*. Bucharest: Judicial Universe.

Kiran, S. (2000). Administrative reforms: Some suggestions, in *Reforming Administration in India*. New Delhi: Indian Council of Social Science Research, Symposium on Administrative Reforms.

Parlagi, A. (1999). *Ethics and Corruption in the Public Administration*. Bucharest: Economic Publishing House.

Vinod, M. (2000). The Introduction to Reforming Administration in India. New Delhi: Indian Council of Social Science Research, Symposium on Administrative Reforms.