THE INSTITUTION OF GOOD ADMINISTRATION IN THE COUNCIL OF EUROPE

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"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."[1] "Greater unity between its members" – the aim of the Council of Europe may be furthered in a range of different ways. Article 1 of the Statute of the Organization makes specific reference to the Council of Europe's mission in maintaining and promoting human rights and fundamental freedoms as a way of achieving this "greater unity". Administrative procedure requires common European regulation by all means, as this is that special field of law by which the administrative body directly meets the citizens. Consequently these cases carry danger that fundamental rights of citizens may be impaired – its occurrence in a constitutional state is undeniably not desirable by any means. Considering the present national administrative systems, the administrative official procedural law is being emphasized. Main tendencies in practice are to constrain the executive power of the state within constitutional frame of law and to guarantee gradually expand the fundamental rights of citizens, establishing the "good administration". Regarding the European administrative law, does European administrative procedural law exist at all? What forms and levels of standardization can be expected? The answer can be given through the documents of the Council of Europe achieved in this field of law.

Before turning our attention to this process, we have to clarify the meaning of good administration. The expression has become somewhat fashionable and appears in various instruments both in European and in national level, but different authors give different definitions. According to Theodor Fortsakis, "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

[1] Statute of the Council of Europe, Chapter I, Article 1.

principle, enshrined and elaborated on in various instruments and European case-law, now stands as one of the cornerstones of modern administrative law."[2] Good administration (some call as useful 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 law, in such a way as to avoid an overly rigid application of the statutory provisions. In other words, not only must they avoid any unfair doctrinal approach but they must also endeavor to adapt the legal rules to social and economical realities."[3] The principle has an ambivalent function, "on the one hand, it acts as an umbrella, under which separate rules are clustered together around a common, guiding idea, namely the idea of good administration; […] on the other hand, it can itself serve as a springboard for specific new rules relating to the same idea."[4] The first interpretation is affirmed by Klara Kanska, who says that "the notion 'good administration' developed as an umbrella principle, comprising an open-ended source of rights and obligations".[5]

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[2] Theodore Fortsakis: Principles governing good administration. European Public Law, Volume 11, Issue 2. Kluwer Law International, 2005. p. 207.
[3] Fortsakis, p. 209.
[4] Fortsakis, p. 211.
[5] Klara Kanska: Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights. European Law Journal, Vol. 10. No. 3. Blackwell Publishing Ltd. 2004. p. 305.