Good Administration in EUCJ Jurisprudence

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Abstract

The present study aims to explain the meanings of good administration and mismanagement. In our paper we will take as reference the cases found in the case law of the European Union Court of Justice regarding the fundamental right of the citizen to a good administration. The idea of this study is that a decision given by the EUCJ does not automatically lead to the annulment of the administrative decision. Any irregularity, any violation of rights, regardless of complexity, can be solved at the country level, thus demonstrating the progressive and democratic characteristics of society.

Key words: good governance, participatory management, the principle of subsidiarity, EUCJ decision.
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1. Introduction

The idea of this analysis starts from the fact that many decisions of the EUCJ include clear information regarding the fact that the violation of one of the various rights that make good administration in the administrative procedure does not automatically make the decision illegal, as can be seen in the analyzed cases.

Before presenting the proposed case law, it should be noted that the provisions of the Charter of Fundamental Human Rights are addressed to EU institutions, and protect individuals and legal entities against actions of EU institutions that violate fundamental rights. When this thing is noticed, the European Court of Justice has jurisdiction to review the legality of the act which is the subject of the action in question.

The concept of good administration is regulated in several international instruments, for example, Title V of the Charter of Fundamental Rights of the European Union includes from article 39 to 46 the rights of citizens in the European Union, yet article 41 is the one that makes specific reference to the above concept. set. It also stipulates that when a national authority infringes the Charter on the implementation of EU law, national judges (according to the provisions of the European Court of Justice) have the power conferred by law to verify compliance with the Charter, given that this international instrument complements the national systems of the member states and the system of protection, guarantee of fundamental rights provided by the European Convention on Human Rights. It is well known that this right is not limited to the EU institutions, but covers all aspects of European Union law: as far as the institutions are concerned, article 41 is directly applicable to them.

Thus, the EUCJ clearly establishes an eloquent reference to the standards required for administrative action and the production of administrative decisions. The aim of the interpretative approach is to capture the concrete effect of all the imperatives imposed by the EUCJ regarding the consequences of the given decisions, given the way in which they are transposed into the law of the Member States.

2. Theoretical background

The theoretical differentiation between administrative and judicial procedures is most likely a crucial argument in favor of mitigating the effects of defects in administrative procedures, given that national procedures could be stricter than the minimum standards proposed at EU level. It should also be emphasized that, at first sight, the judge assesses the legality of the administrative decision and does not prolong the administrative action in the judicial phase. However, it must be acknowledged that, at this point, the cultures of administrative justice in Europe are probably very different, and the separation between administrative and judicial action is not always so strict (Dănişor, 2009).

This can be important globally, startinf from the administrative procedure that leads to a decision to the final legal decision. A simple violation of an administrative procedure does not affect the entire procedure if there are other steps that would compensate for the error (Munteanu, Rusu, Vacarciuc O., 2015). For example, in Sweden, the first instance provides environmental consent for industrial plants and indeed in this case it plays the role of administrator. In this specific case, there is indeed no clear line between pure administrative procedure and judicial procedure, but this is an exception. Countries with autonomous administrative jurisdictions (France, Germany, Italy, Sweden, etc.) have historically justified the development of administrative justice by the need of specific procedures when state authority is involved.

It is understood that, in this context, the judicial procedure can accommodate an ability to defend the general public interest, avoiding pure procedural annulments of administrative decisions. All these cultural differences are extremely important and a detailed assessment would require a thorough analysis of each national legal system. For the purpose of the demonstration proposed in this study, it is sufficient to note that in Europe there are supreme obstacles between administrative and judicial proceedings.

However, the differential treatment of public authorities, the violation of citizens' rights at national level, is less and less tolerated by citizens, who claim these violations in justice regarding human rights and citizens' rights.

Another aspect related to the development of this flexible EU case law is its impact on decisions taken by national authorities based on EU law. In this context, national courts are generally responsible for enforcing EU law in combination with national procedural rules, as EU law in most cases provides a framework with some possibilities to adapt to the national context..

The jurisprudence of the EUCJ states a clear position regarding the violation of procedural rights, without the need to annul a decision. However, this clear position can be combined with another clear option of the EUCJ case law: The Court explicitly states that the exact effect of a breach of procedural rules must be governed by national law, as long as the principle of effectiveness is not affected. What does the effectiveness of EU law actually mean? We could consider that the effectiveness of EU law lies in material law - such as ensuring the effectiveness of competition rules or avoiding state aid (Douglas, 1985).

We can also talk about the effectiveness of laws on fundamental rights and principles, being able to take into account the desideratum of the right to defense (Andrițoi C., Lupșa F., 2014). However, while Member States may allow the exercise of the right of defense in accordance with the same rules as those governing internal situations, it must not be overlooked that compliance with European law in general is necessary, and in particular we must not undermine the effectiveness of the normative acts and provisions provided in the Customs Code. This reference for a preliminary ruling is made on issues relating to the interpretation of the general principles of Union law and the principles governing the application by the Member States of the common rules on customs duties.

The EUCJ 's approach to the violation of the right to good administration is therefore not straightforward, and the way in which national and European procedural case law is combined is only the first issue addressed for its implementation.

3. Research methodology

The EUCJ 's approach can be considered a pragmatic one: the right to good administration is a procedural right and a violation would have effect only if it has a direct consequence on the outcome (Bălan, 2000). This is a purely teleological reasoning, being also a legal technique of interpretation, very frequently used by the EU Court.

The research method used for this study consists of the case law analysis of several EUCJ judgments, which demonstrates that while Member States may allow the exercise of the right of defense in accordance with the same rules as those governing internal situations, these rules must comply to European Union law and, in particular, must not undermine their direct effect on national law

Comparison as a research method used demonstrates the process of knowledge that is based on the comparative study of various systems or subsystems of law, which seeks to find or highlight elements of similarity or difference between the phenomena or investigated concepts (Santai, I., 2002).

We also used the prospective method, which uses the substantiation of the adaptation of new normative acts and includes the interpretations given by the bodies that will apply the respective normative acts. Through these methods we aimed, on the one hand, to increase the role of the forecasting function, and on the other hand, to increase the role of the explanatory function (Whelan, 2006).

Currently, researchers consider that comparative law fulfills the following functions: the function of knowing national law, the normative function, the scientific function and the function of contributing to the unification of legislation (Spătaru-Negura, 2019).

The case study analyzed reveals the right not to be heard as a basic element of the right to good administration, which according to the cases trialed by the European Court, is a component of the right to defense. More specifically, the right of defense is then supplemented by a procedural right, the right to be heard, fully regulated in the provisions of the Charter, both in article 41 and in articles 47 and 48 of the Charter, thus covering all dimensions of the right to a fair trial. In the architecture of the above-mentioned regulations (articles 47, 48) can be seen their equivalence with articles 6 and 13 of the European Charter of Human Rights, where the subsequent rights to ensure a fair trial are analyzed in detail. Noting the major importance of the rights of defense, we cannot help but be surprised that non-compliance, violation, ignorance of these rights, has relatively small consequences in importance.

If a right is considered a fundamental right, we could conclude that this would lead to the annulment of the decision in case of violation of this right without further discussion. However, the process does not seem to be automatic. In other words, this means that a violation of a fundamental right is not always severe enough to lead to the illegality of a decision taken in violation of this right (Matei, Iancu, 2007).

The EUCJ 's position does not seem to be based on a general consensus, thus leading to different opinions among specialists. An idea contrary to the jurisprudence of the EUCJ revolves around the answer to the following question: if the right to good administration is categorized as part of the area of fundamental rights, then why is it possible to negotiate it, since scientific reason categorizes it as a right of defense? (Clement, 2018)

Thus, this ambiguity needs some clarification. The EUCJ makes a substantial difference between administrative and judicial proceedings. Since the framing of the right to good administration in de jure configuration of the right of defense is clearly established, it does not imply that the right to defense is considered automatically infringed in case of violation of the right to good administration during the administrative procedure (Mendes, 2009). This issue could be interpreted as referring to the fact that, during the judicial procedure, the rights of the defense could compensate for the de facto infringement during the administrative procedure.

Another case to the EUCJ, having as objective to make a bill for a preliminary ruling on the interpretation of article 41, analised above, of the Charter of Fundamental Rights of the European Union and of article 15 (6) of a directive issued by the European Parliament in 2008, supplemented by the provisions of the EU Council in the same year, with regard to the common standards and procedures applicable in the Member States for the return of illegally staying third-country nationals,

discusses the possibility of adopting public custody measures or extension of the residence permit, depending on the situation that becomes applicable to the case. There may also be a lack of cooperation of nationals in case of rejection of the extension authorization and the beginning of the forced return procedure, most often being invoked in this case the lack of guarantee of the right to defense or its flagrant violation thereof, knowing the need for application, recognition and guaranteeing to all people the right to be heard before taking any individual action that could harm their interests.

In another case, which refers to requests for a preliminary ruling, the need to recover a customs debt is prefigured, thus both the principle of respect for the rights of the defense and the right to be heard all involved parties being applicable.

In the present case, it is revealed that the addressee of the recovery decision was not heard by the Customs authorities before the decision was adopted, thus blatantly violating his right of defense. In order to determine the legal consequences of non-compliance with the above-mentioned rights, the situation of annulment of the decision taken at the end of the administrative procedure becomes applicable according to the Union law, which may lead to a different result, if no irregularity had been identified.

The right to be heard in all proceedings is enshrined not only in articles 47 and 48 of the Charter, which ensure respect for both the rights of the defense and the right to a fair trial in all judicial proceedings, but it is also enshrined in article 41 of the Charter, which guarantees the right to good administration. Article 41 (2) of the Charter provides that the right to good administration includes, inter alia, the right of every person to be heard before taking any individual action which would adversely affect him or her.

4. Findings

A serious problem in the implementation of EU case law is the proof of the fact. It is well established that the rules governing evidence are crucial in determining the outcome of a case.

The current case law of the EUCJ tends to be based only on the teleological argument, as I mentioned earlier: would the decision be different if administrative procedural rights had not been violated?

However, it is clear that, depending on the party who has to show no effect on the administrative decision, the balance between the parties is completely different. The EUCJ rightly rules out imposing on the applicant the need to prove that the decision would have been different if the infringement had not existed. Obviously, the applicant's request must prove that the effect would not make sense, since the administration could at any time claim that, being the one who took the decision, it ensures that the decision was not affected by the infringement!

An example that supports the ideas presented would be C-141/08 October 1, 2005 Foshan Shunde Yongjian Housewares & Hardwares Co. Ltd- Action for annulment of Regulation (EC) Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive disposal duty and collecting the provisional duties imposed on imports of ironing boards originating in the People's Republic of China and Ukraine (OJ 2007 L 109, p. 12) imposes an anti-dumping duty on imports of ironing boards manufactured by the applicant (http://curia.europa.eu/juris/document/document_print.jsf;jsessionid=9ea7d2dc30d59ed6681292d644738b0c9ea7147b7195.e34KaxiLc3qMb40Rch0SaxuSchv0?doclang=EN&text=&pageIndex=0&docid=112203&cid=733741).

Furthermore, according to the case-law of the Court, the appellant cannot be asked to show that the Commission's decision had a different content, but simply that such a possibility could not be ruled out altogether, as he would have been better able to defend and there was no procedural error.

But what does the phrase "that such a possibility cannot be completely ruled out" refer to? Taken literally, the expression leads to an impossible proof for the administration. This idea would save administrative decisions only in cases where the violation is "external" to the decision-making process itself or if the appellant does not indicate what information could be provided to the administration (Marinica, 2011).

However, it should also be emphasized that the wording of the Court emphasizes the procedural aspect in relation to the person's ability to defend himself. In practice, an appellant who claims that, not being heard in the administrative procedure, is not able to try to convince that the administration could fall into this category (Sudre, 2006).

Thus it can be offer as example the interesting discussion of the role of oral hearings in the opinion of General Advocate Wahl in Case C-154/14 P. '79 Judgment of the Court (Fifth Chamber) of 16 June 2016, SKW Stahl-Metallurgie GmbH and SKW Stahl -Metallurgie Holding AG v European Commission - Appeal - Competition - Agreements, decisions and concerted practices - Article 81 EC - Markets for calcium powder, calcium granules and magnesium granules in the European Economic Area - Pricing, market sharing and exchange of information - Regulation (EC) No 773/2004 - Articles 12 and 14 - Right to be heard - In chamber meetings. (http://curia.europa.eu/juris/liste.jsf?num=C-154/14&language=EN)

We can argue that there is a difference between considering whether a party would have been better able to defend itself, whether it would have been granted access to the entire file and, on the other hand, whether it would have been granted a hearing.

There is also nothing to prevent a party from submitting other relevant confidential information to the Commission during such a meeting as not previously alluded to. Therefore, if there is a right to a hearing in the Chamber before the Commission and if an oral hearing is held only once - as in the present case - then the party who has been entitled cannot be considered to have been heard.

This is equivalent to a court hearing: it can never be ruled out that, by pleading, judges could change their minds!

5. Conclusions

Obviously, there is a tension between the teleological approach, which concerns only the outcome of the process, and an approach that highlights the role of procedure relieve in the jurisprudence of the EUCJ. The case of Foshan Shunde Yongjian Housewares & Hardware Co. Ltd v Council of the European Union, is an eloquent illustration of this tension.

It can be considered that, at least, there is an obligation on the appellant to show that he had a number of arguments to put forward. This could be seen as a dialectical reasoning in the trial process: the appellant must provide some clues that the hearing would be a serious opportunity to defend the case. This first step would establish a presumption of usefulness for the hearing, and the administration should react and oppose to this presumption.

However, at this stage, the observations are not fully supported by the limited case law of the EUCJ in the cases presented and we should only conclude that further clarifications are needed from the Court of Justice.

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