

Dawid Stadniczeńko

“GOOD ADMINISTRATION” AS A MODEL OF THE INTERNATIONAL PRINCIPLE OF AN IDEA OF THE RULE OF LAW IN THE CONTEXT OF THE COUNCIL OF EUROPE

Introduction

Reflections made on the concept of good administration, which is an unquestionable international standard on the basis of the Council of Europe, provide a basis for further planned research on the implementation of administrative standards in the globalizing world and the creation of international administrative law as a coherent system.

The right to good administration is also considered in the non-legal category as a multifaceted social phenomenon [Żuradzki 2016, 53]. A special role in the European region regarding creation and dissemination of the standard of good administration is played by the Council of Europe (CoE) and the European Union (EU). This is one of the areas where overlapping of jurisdictions between these two international organizations occurs. For a long time now, it has been possible to notice the progressing process of juridicalization of societies through the use of public-law regulations and socialization of law through the use of institutions typical for private law, while the division of the legal system into public and private law remains valid. There is a process leading to the proceduralization of law, which involves a gradual abandonment of regulations based on substantive law in favor of regulations based on procedural, competence or organizational standards.

The phenomenon of heterogenization (particularization) of law goes hand in hand with its progressive multicentricity, as in the globalization conditions the law becomes a polycentric order, created by independent decision-making centers, which applies both to national law, international law, European law, as well as regulations created by transnational corporations. Legal theoreticians note that the unification and problems of functioning of the legal system against the background of ongoing globalization processes and internal differentiation (heterogenization) of modern post-industrial societies are rarely discussed in the Polish theoretical and legal reflection, especially in the perspective of intense international administrative law development.

The traditional Weberian model based on hierarchically ordered departmental structures began to undergo changes as a result of global, regional and national phenomena, which were first observed in the 20th century [Pawłowska 2018, 37].

The image of the system of law, both in the science of law and in legal practice is still influenced by the positivist paradigm. It functions as a basic assumption of doctrinal and operative interpretation. The 1957 Treaties of Rome did not provide for such fundamental changes in law as we have witnessed in recent decades. The evolution of European law took place as needed with the development of European integration [Burley and Mattli 1993, 41-86]. Under the conditions of polycentric and negotiable normative order, the issue of semantic coherence of the system of law in such dynamic branches of law as administrative law is shaped, thus becoming a challenge for researchers of international administrative law as well as the understanding of public administration and defining the limits of this concept [Slage and Williams 2018, 259]. There has been a refinement of the legal basis of its activities [Cooper 2017, 346].

Literature, which declares among us its belonging to the science of administration, has until recently approached the international problems of the Council of Europe and the European Union with too narrow interest, e.g. in the expressions concerning the influence of the European Union outside, on national law and the administration of particular states. The interest in these problems was filled by literature on comparative administration and related fields, especially European studies and, to a slightly

greater extent, political science. It is worth noting the work of J. Supernat [Supernat 2013, 4] on a specific systemic phenomenon, namely the administration of the European Union. This is a unique subject of research, both for theoretical and practical reasons. From the theoretical point of view, the aim of research, which is “description and analysis of the EU administration through identification and conceptualization of its selected basic issues” requires on the ground of administration science to construct methodological assumptions, necessary for mastering a new area of administrative reality, which means cognitive opening of this discipline and enrichment of its system of notions, ways of reasoning, planes of drawing new category of conclusions. The unique practical value of the work consists in a detailed and precise presentation of an extremely important, central fragment of the internal structure of the EU from the perspective of functions attributed to it, determining the role that the Union plays in relation to systemically related, but external entities. The methodological intention in this work is limited to “analysis and description, which constitute the basis and condition for further research, devoted to de facto administrative policy.”

1. Patterns of good administration

An extremely important aim of the issues addressed in the title of this paper is to show the pattern of international idea of the rule of law and its creation by the Council of Europe due to its significance for the research on international administrative law. The core of international law is the action in mutual relations of sovereign entities, i.e. states. International law loses its reason without the existence of mutually independent primary actors, as it cannot exist without a horizontal plane of application of its standards. The issue of subjectivity remains significantly related to the concept of international law. As L. Antonowicz notes, these are “two things mutually dependent” [Antonowicz 2002, 8].

It is possible to point to one negative criterion and three positive criteria of “internationality.” The negative criterion is the inclusion in international law of legal standards that are not standards of individual states. The positive criteria include: a) formation of standards – multilateral, at least bilateral mechanism of formation of legal standards, b) objectivity

– regulation of events that cross the borders of individual states, including events that do not relate to private law relations, c) subjectivity – regulation of the status of entities having, to varying extents, the ability to act legally in the sphere of international relations [Idem 1998, 15-16].

Individual states through international law seek to satisfy both their own interests and the implementation of values important to humanity, such as peace, justice, provided that these values remain formed by the understanding and axiological sensitivity of those acting on behalf of the states [Koskenniemi 2010, 33-34]. This axiological awareness of state authorities gives content to the universal value underpinning the international legal order. This value is formed in the normative discourse that results in acts of particularistic, regional and universal international law. The community of states legitimizes, or refuses to legitimize, the behavior of its members because of the standard(s) adopted on the basis of their commonly shared values. In fact, this thought is present throughout the intellectual history of international law. M. Koskenniemi emphasizes the impact of international law fragmentation. As a consequence of the breakdown of the unity of international law science, the perspective of perception regarding legal problems changes. The main political and legal problems of the modern world are often presented only as conflicts of jurisdiction and applicable law, as if there was no perspective of one international law [Idem 2009, 7, 10].

The starting point for further analysis is the statement that the Council of Europe is based on the rule of law. This term, referring to a construction firmly rooted in the common law tradition, appears in the text of the Statute of the Council of Europe of 5 May 1949, inter alia in the preamble: “The governments of the Member States [...] Unswervingly attached to the spiritual and moral values which are the common heritage of their peoples and which are the true source of individual liberty, political freedom and the primacy of law, on which every true democracy is founded [...] Article 3 Each Member of the Council of Europe recognizes the principle of the rule of law and the principle that everyone within its jurisdiction must be able to exercise human rights and fundamental freedoms.” The construction of the rule of law in relation to the Council of Europe is entirely appropriate. The Council of Europe is not a state, but a special international organization with a supranational legal order that respects the values of the rule of law. In the context of the Council of Europe, the term

“legal state” adopted in Poland and in the continental tradition should be replaced with the term “rule of law.” The Council of Europe was established as a result of decisions made during The Hague Congress on May 7-10, 1948. The Congress was a forum for elaborating ideas and methods of European integration for many pro-European organizations. The final plenary session of the congress adopted by acclamation the “Message to Europeans¹ demanding: 1) a united Europe based on the free movement of people, goods and ideas; 2) establishment of a Charter of Human Rights; 3) establishment of a Court of Justice with appropriate sanctions for non-compliance with the Charter of Human Rights; 4) establishment of the European Assembly in which all European countries would be represented; 5) commitment of all circles to support peace and integration.”² In the concluding declaration of the “Message to Europeans,” the congress participants unanimously expressed their will to create a united Europe. The Council of Europe was founded on the basis of a statute signed in London on May 5, 1949.³ The decision to create the Council of Europe was a culmination of the process of searching for structure that would fulfill the vision of an integrated Europe [Nowicki 1992, 16]. J. Jaskiernia states that it is often referred to as an “organization of values” [Jaskiernia 2010, 173]. A.H. Robertson points out that the Council of Europe is oriented towards creating and promoting democracy, rule of law and effective protection of human rights in its member states [Robertson 1975, 564]. The Treaty establishing the Statute of the Council of Europe has been signed by the foreign ministers of ten countries: Belgium, Denmark, France, the Netherlands, Ireland, Luxembourg, Norway, Sweden, the United Kingdom and Italy. The signatories of the London Treaty became the founding members of the Council of Europe, the Statute provided the legal basis for the Council’s activities. In Article 1, the Statute stated, among others, that “the aim of the Council of Europe is to achieve greater unity among its members in order to secure and put into practice the ideals and principles which constitute their common *acquis* and to facilitate their economic and social progress.” The conference further agreed that the main organs of the Council of Europe would

¹ European Movement and the Council Of Europe, London, 1949, p. 37-38 and Congress of Europe. The Hague-May 1948. Resolutions, p. 15.

² *Ibid.*, p. 38.

³ European Treaty Series (ETS) No. 1, Journal of Laws of 1994, No. 118, item 565.

be: the Committee of Ministers, consisting of representatives of the governments of member countries, and the Consultative Assembly, which in 1974 was renamed the Parliamentary Assembly. It was composed of deputies elected by the parliaments of member states or nominated by the government [Patek, Rydel, Węc, et al. 2003, 121]. The Secretariat of the Council of Europe, headed by the Secretary General, was established to support the Advisory Assembly and the Committee of the Council of Ministers. On August 8, 1949, the inaugural meeting of the Council of Europe was held in Strasbourg. The statute of the Council of Europe introduced ordinary and associate membership. The following years saw further enlargement of the Council of Europe. The basic condition for membership was a democratic system of the host country and respect for human rights. Decision on membership was taken by the Committee of Ministers by a qualified majority of two-thirds of votes. The most important instrument of human rights protection in Europe, developed within the regional system of the Council of Europe, is the Convention for the Protection of Human Rights and Fundamental Freedoms, known as the European Convention on Human Rights – ECHR.⁴ It was signed in 1950 and came into force in 1953, constituting the key legal instrument of a treaty nature developed by the Council of Europe. The fundamental meaning here is the complaint, which can be submitted by citizens of the state parties of the Convention to the European Court of Human Rights. This body plays a fundamental role in interpreting the content of the Convention and consequently in defining the scope of human rights protection in the European region.

The right to good administration is taken into account in contemporary scientific research [Michalińska 2004, 152-65; Kochanowski 2008, 11-17; Śliwa 2010, 217-25; Jaskiernia 2011, 14-32; Pavel 2012, 919-33; Łukasiewicz and Wrzosek 2007, 1-307; Korczak 2018, 13-24], which are interdisciplinary as there is an interface between administrative law and constitutional law [Heuschling 2017, 493-556]. It is noticeable that international law and European law are increasingly involved [Cassese 2012, 34]. An increasing tendency to search for a formula of global universal administrative law occurs [D’Alberty 2017, 113; Farmer 2010, 51ff; Tholen 2011, 34; Bignami 2012,

⁴ European Treaty Series (ETS), No. 5, Journal of Laws of 1993, No. 61, and Journal of Laws of 1998, No. 147, item 962.

145]. It is assumed in the literature that the term standard is understood as a model, which should be met by a constructed legal institution, a manner of action or omission. J. Galster states that the standard determines a certain recommended practice of conduct, often appearing in the form of technical annexes, such as various regulations [Galster 1997, 23]. It can also mean a certain measure or pattern in the context of standard of treatment, standard of cooperation, technical standard, or legal standard. It often constitutes a recommendation in the process of creating law or a set of certain values in the axiological layer. It may be found in various acts (statutes, international agreements constituting an international organization, unilateral contractual acts, ordinary international agreements, non-hierarchical acts in the law of international organizations, sometimes collectively called resolutions of international organizations – decisions, resolutions, regulations, recommendations, individual decisions and others). M. Gulczyńska points out that the standard may play the role of a source of law, e.g. international law or administrative law by assuming that we are dealing here with the so-called unorganized source which is particularly present in administrative law. This leads to situating the legal standard next to the references and non-legal standards used by the public administration, custom, judicial decisions and doctrine [Gulczyńska 2008, 108].

D. Sześciło states that the right to good administration initially functioned only as a doctrinal concept, not expressed *expressis verbis* in legislation. This changed only under the influence of efforts made at the level of European institutions, especially the Council of Europe and the European Union [Sześciło 2014, 950]. It constitutes “a set of rights to which the citizen is entitled in his authoritative relations with public administration bodies and aimed at protecting the subjective rights of the individual, as well as more broadly: the regularity, reliability and efficiency of administrative proceedings” [ibid., 95]. A. Szyszka argues that the right to good administration is also defined as a legal category that includes the citizen’s rights, to which the obligations of the public administration body are related [Szyszka 2019, 451]. I. Lipowicz, on the other hand, emphasizes that “it is classified among the basic guarantees of democratic, law-abiding, just and balanced state of public space in the state” [Lipowicz 2013, 36]. Z. Cieślak stresses that the right to good administration is defined in terms of: – citizen’s rights and the related obligation of the public

administration body, – public subjective right, – non-binding legal principle from which actions involving the introduction of new solutions result (extra-legal category), – extra-legal category, e.g. ethical or psychological [Cieślak 2003, 18].

2. Factors of good administration

Soft law instruments also play an important role in the Council of Europe, which is a feature of the Council of Europe. This refers in particular to the recommendations of the Committee of Ministers addressed to member states. Although they are not formally binding, the Committee of Ministers has the right – according to the Statute – to ask Member States to inform it “what course the recommendations have taken” (Article 15(b)) is only *prima facie* non-binding law. Standards in the area of “soft law” either inspire the emergence of treaty standards (in which case their importance is transitory), or supplement them (in which case their importance is permanent, provided that the matter regulated by them is not suitable for inclusion in treaty standards) [Mik 1993, 97]. It is the duty of a member of the Council of Europe to respect the recommendations formulated within this organization, e.g. Resolution (77)31 of the Committee of Ministers of the Council of Europe on the protection of individuals against administrative acts, adopted on 28 September 1977, which ordered that “in implementing the principles set out in the resolution, account should be taken of the requirements of good and efficient administration, as well as the interests of third parties and important public interests.”

The Council of Europe’s commitment to good administration culminates in Recommendation R(2007)7 of the Committee of Ministers of the Council of Europe of 20 June 2007 to the Member States on good administration (the so-called Code of Good Administrative), which states that good administration must be ensured by the quality of legislation that must be relevant and consistent, clear, easily understandable and accessible, and the services it provides must meet the basic needs of the public. The Recommendation also notes that, in many situations, good administration involves achieving a proper balance between the rights of persons directly affected by the action of the State, on the one hand, and protecting the interests of the community as a whole, and particularly the weak or disabled,

on the other, and recognizes that procedures designed to protect the interests of individuals in their relations with the State should in certain circumstances protect the interests of other persons or of the wider community, an essential aspect of good governance which depends on the quality of organization and management. Good administration, as a model, must meet the requirements of efficiency, effectiveness and relevance to the needs of society, but also maintain, enhance and protect public property and other public interests. The Council of Europe also stressed that the above also depends on adequate human resources available to public authorities as well as on the quality and proper training of public officials.

Referring to the European soft-law shaping administrative standards and proceedings through resolutions and recommendations of the Committee of Ministers of the Council of Europe, it is worth emphasizing that it is the most important normative, decision-making and controlling body of the Council of Europe. The fact that the Committee has been directly involved in the functioning of control mechanism over the obligations resulting from the European Convention on Human Rights and its Protocols is unprecedented in the world. The final judgments of the European Court and their execution depend on the efficiency of the Committee of Ministers, as this body is responsible for their implementation and has the means to induce states to comply with the judgments made in the field of human rights. The sphere of administration and administrative procedure is an area in which different European countries have developed different content, organizational and procedural solutions. Therefore, in its very assumption, it is not a sphere that would be suitable for imposing any uniform model. In principle, the documents established by the Council of Europe can be categorized into two groups, i.e. documents concerning the proper administration's functioning and documents more directly concerning the protection of persons (usually physical and legal) from the administration's acts, including the issue of liability. Acts of both groups are intertwined, mutually refer to each other and serve analogous function. In principle, in each of the documents the "requirements of good and effective administration" are declared. This is pursued by the principle of flexibility, which interacts with the principle of effectiveness.

In view of the differences in legislation and systems between the Member States, these documents try to reach a "consensus on fundamental

objectives through rules of administrative procedure,” stressing “the need to respect the principle of equity in the relationship between the individual and the administration,” “striving for maximum equity,” as well as the development of “a common level of (individual) protection in all Member States” or “common minimum standards.” In addition to the highlighted “requirements of good and efficient administration,” there are also “interests of third parties” (which corresponds in terms of human right standards to the obligation to respect the rights and freedoms of others), “important public interests” (which corresponds in limitation clauses to the objectives of territorial integrity, national or public security, public order or the prevention of disorder and crime, health and morals, etc.), exceptionally also “higher interests of the person concerned.”

The Council of Europe is geographically limited to the territory of Europe. It was intended to be a formula for crystallizing Western European integration – a model based on a community of values and cultural identity. From the very beginning of its existence, the Council of Europe has supported the creation of a democratic legal basis, institutional mechanisms of democracy, including administration, justice systems, etc. However, it should be noted that at the end of the 20th century, the Council of Europe began to show signs of losing its significance. It became an organization that stopped in its membership development becoming a kind of club. The practice of some member states undermined the application of credibility standards as a democratic community. Some countries of Central, Eastern and Southern Europe focused their political attention on membership in the EU.

Many authors, including J. Jaskiernia points out that the analyses conducted by the Council of Europe show that despite the multitude of systems for the protection of human rights in Europe, a number of problems in this area has not been resolved, and new challenges are growing [Jaskiernia 2009b, 129]. J. Jaskiernia states that “in modern times, the activity of the Council of Europe – in public perception – seems to remain in the shadow of the European integration process and its representative body – the European Parliament” [...] the activity of the Council of Europe is known to a disproportionately low degree in relation to the significant achievements which this organization has made during the 50 years of its activity” [Idem 2000, 10-11].

H. Izdebski states that there is no doubt that *in statu nascendi* it was the Council of Europe that was to be the fundamental forum for European integration [Izdebski 1996, 9], while the Parliamentary Assembly (originally called the Consultative Assembly) was to be the core of the European Parliament [Jaskiernia 2000, 27]. Based on the typology of international organizations, the European Council is a precursor organization – the first one that has established values as the foundation of its membership. Its novelty should be especially appreciated now, when it is claimed that the international system should evolve towards a value-based system [Świtalski 2009, 15].

It is worth pointing out two aspects of the functioning of international community concept in the science of international law. The first one – descriptive, points to the fact that there are entities maintaining mutual relations with each other, the second aspect – normative, emphasizes the importance of ideological and axiological “core” divided by the members of the community. The international community in this second sense does not have to correspond to the actually existing international community [De Visscher 1960, 116-17, 130; Rousseau 1974, 5-7; Armstrong, Farrell, and Lambert 2007, 24-31]. Relations within the international community are carried out in two dimensions: horizontal (relations between mutually independent entities) and vertical (relations between states and other members of the international community). International law in relation to these relations is a secondary phenomenon, as it is their existence that forms the basis for the formation of legal obligations. In this respect, international law is a result of communication between different entities sharing common beliefs about their future desired mutual behavior [Franck 1990, 39].

The reform conducted on the basis of Protocol 11 to the European Convention on Human Rights, in the form of establishment of the European Court of Human Rights, in place of two “non-permanent” bodies, i.e. the European Commission of Human Rights and the European Court of Human Rights [Przyborowska-Klimczak 1995, 96], undoubtedly contributed to improvement of the system of complaint handling [Rowe and Schlette 1998, 14]. It should be noted that Article 6(1) of the European Convention on Human Rights lists, among the guarantees of the right to a fair trial, impartiality, fairness and a reasonable time. Although the ECHR does

not directly refer to the standards of administration (administrative proceedings) [Lilovska 2003, 110] the European Court of Human Rights, and earlier the European Commission of Human Rights, interpreted the provision of Article 6 of the ECHR in a broader manner, taking into account that this provision is of fundamental importance for democratic processes. M. Szweczyk emphasizes that judicial administrative control is “an effective instrument for shaping administrative jurisdiction, ensuring legality and uniformity of public administration actions” [Szweczyk 2003, 55].

In addition to the European Convention on Human Rights, the following are also relevant: 1) European Social Charter⁵ and European Social Charter (Revised)⁶ considered as equivalents of the European Convention on Human Rights in the sphere of economic and social rights. They cover a wide range of rights concerning housing, health, education, employment, social protection and non-discrimination [Świątkowski 2003, 36]; 2) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,⁷ which complements the protections of the European Convention on Human Rights by creating the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), with powers to inspect and admonish states [Machacek 1997, 39]; 3) Framework Convention for the Protection of National Minorities,⁸ which is today the only multilateral legal instrument in force that guarantees persons belonging to national minorities full and effective equality in relation to the majority and other minorities [Nastase, Miga-Besteliu, Aurescu, et al. 2002, 19]; 4) The Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Person with regard to the Application of Biology and Medicine,⁹ which is the first international agreement in force to protect human dignity and fundamental rights against possible abuses in the application of medicine and biology. It contains a set of principles designed to give human beings greater value than technology has, and which form the basis of the modern European code of patients’ rights. In addition to the Protocol banning

⁵ ETS No. 35.

⁶ ETS No. 163.

⁷ ETS No. 126.

⁸ ETS No. 157.

⁹ ETS No. 164.

the cloning of human beings, signed in Paris in 1998,¹⁰ an additional protocol was adopted on the transplantation of organs and tissues of human origin;¹¹ 5) The Council of Europe Convention for the Protection of Individuals¹² with regard to Automatic Processing of Personal Data is another act that according to J. Jaskiernia [Jaskiernia 2009a, 254-68] aims to guarantee to every natural person, regardless of his or her nationality or place of residence, respect for his or her rights and fundamental freedoms, especially the right to private life, in relation to automatic processing of his or her personal data; 6) Charter of Fundamental Rights of the European Union, which is the most relevant in terms of understanding the concept of the right to good administration in Europe. The Charter states in Article 41(2) that the right to good administration includes: a. the right of everyone to be heard before individual measures which may adversely affect him or her are taken; b. the right of everyone to have access to his or her file, while respecting the legitimate interests of confidentiality and professional and business secrecy; and c. the administration's duty to give reasons for its decisions.

Undoubtedly, the establishment of the Commissioner for Human Rights of the Council of Europe proved to be an important institution. J. Jaskiernia points out that this institution has significantly contributed to the research of the state of observance of rights by individual member states, becoming an important point of reference for reforming the systems of protecting human rights and opposing the states of infringement of rights that are not of an individual nature [Jaskiernia 2008, 12], often dealing with issues concerning the infringement of the principle of the rule of law, e.g. in the field of violation of the right to good administration.

It should also be noted that the Congress of Local and Regional Authorities of Europe, as an advisory body representing local and regional authorities of the Council of Europe members, undertakes a number of valuable activities at the local level in the field of dissemination of the ombudsman institution,¹³ which also contributes to counteracting violations of law.

¹⁰ ETS No. 168.

¹¹ ETS No. 186.

¹² ETS No. 108.

¹³ Principles Governing the Institution of the Ombudsman/Ombudsperson at the Local and

Given the existing divergences and the risk of misunderstandings among the members of the Council of Europe, it has been agreed to define important terms that are included in the content of documents such as: administrative act, discretionary power, public authority, reparation, act, victim, public service, public responsibility. From the point of view of their content, documents include the normalization of basic principles, procedure and control. In 2017, the Committee of Ministers of the Council of Europe undertook an analysis of the implementation of 12 principles of good governance,¹⁴ recognizing that they can play an important role in ensuring the Sustainable Development Goals approved by states under the auspices of the United Nations, as well as within the Open Government Programme adopted by the Organization for Economic Cooperation and Development (OECD). The principle of “good administration” is associated with the means provided to citizens in order to ensure their effective protection in the face of actions of state or local government bodies [Fortsakis 2003, 59]. There is a diverse legal dimension in different administrative systems [Boughhey 2013, 55; Strauss 2017, 58]. Different legal culture and political culture determine different institutional and competence solutions in the implementation of the principle of “good administration.” The Council of Europe not only sets standards for good administration, but also assists member states in their practical implementation. M. Frańczuk states that good administration is one of the determinants of an axiological system of modern management [Frańczuk 2016, 29]. It is also sometimes analyzed in the context of “good government,” emphasizing its transparency and responsibility in the implementation of common good [Negrut 2011, 7]. The occurrence of disputes, controversies in the doctrine as to the legal nature and shape of the right to good administration cannot negate the fact that it has become a standard that is important for citizens and public administration.

Regional Level, Strasbourg 2005, p. 8.

¹⁴ Principles of Good Governance and European Label of Governance Excellence, <https://www.coe.int/en/web/good-governance/12-principles> [accessed: 10.08.2021].

Conclusion

It should be noted that in the science of administration (as a social science) for a long time there is visible dynamic development in the conditions of polycentric system of law. The cognitive value of social science discipline, which is a proof of development, is expressed and confirmed in its openness to new phenomena in functioning of human communities, provided that the consistency of basic methodological assumptions is maintained. Administrative law of the Council of Europe and the European Union determines performance of administrative functions and tasks, organizational structure of competent entities, procedures of their activities. On this basis it is possible to discuss the expediency of research, functional, organizational and procedural approaches. It is significant that in most of the legislative areas in which the Council of Europe is active, the European Union has emerged acting to strengthen its own position and is not interested in sharing competencies with other international organizations. The organizational aspect of the EU administration's operation and procedural concepts addressed in the literature reveals the complexity and intricacy of this phenomenon as well as leads to the conclusion that its study through the prism of administrative law is insufficient. The study of administration "constitutes a conceptual and methodological challenge that requires an interdisciplinary perspective" [Supernat 2013, 32]. Such a perspective, among many scientific disciplines, is most fully opened by the science of administration – as a complex science, studying actual administration in its legal and other conditions, with the aim to show the existing state.

Therefore, it seems necessary, as J. Supernat points out, to determine whether "the science of administration is prepared to study international administration, because the Council of Europe and the European Union is not administration of a state in any classical sense, [...] it is a unique structure, having a kind of hybrid nature, being neither administration of a state (unitary or federal), nor administration of a (classical) international organization."

G. Kuźnik notes that "good administration" is perceived in terms of a contemporary challenge [Kuźnik 2013, 32], considered as an international standard that has an increasingly important role in relation

to the functioning of contemporary public service giving it the character of a “third generation human right” [Cieślak 2003, 18; Bojanowski 2005; Tanquerel 2007, 49]. However, in the European region, the lack of coordinated mechanisms of influence of the Council of Europe and the European Union on member states and on the practice of implementation of tasks by the administration of member states is revealed. The multifaceted process, the model of implementing European systems of good administration requires in-depth interdisciplinary research, all the more as there are already visible activities of e.g. the World Bank for reforming public institutions and improving the quality of management, the United Nations initiative for implementing e-governance and other organizations.

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“Good Administration” as a Model of the International Principle of an Idea of the Rule of Law in the Context of the Council of Europe

Abstract

The article reflects on the concept of good administration, which is recognized as an unquestionable international standard on the basis of the Council of Europe, which plays an increasingly important role in relation to the functioning of the modern public service giving it the character of “the third generation human right.” Author points out that the different legal culture and political culture determine different institutional and competence solutions in the implementation of a single principle of “good administration.” In this case, the Council of Europe not only formulates standards for good administration, but also assists member states in their practical implementation. A special role in the European region in the creation and dissemination of the standard of good administration is played not only by the Council of Europe, but also by the European Union, which, as the Author stresses, supports the phenomenon of heterogenization (particularization) of law, which nowadays goes hand in hand with its progressing multicentricity, which under the conditions of globalization transforms law into a polycentric order, created by independent decision-making centers – concerns both national law, international law, European law, as well as regulations created by transnational corporations. In this aspect, considerations of the right to good administration were also raised in the non-legal category as a multi-faceted social phenomenon affecting every individual.

Keywords: good administration, Council of Europe, principles of law, citizen, international administrative law

„Dobra administracja” jako wzorzec międzynarodowej zasady idei rządów prawa w kontekście Rady Europy

Abstrakt

Artykuł zawiera refleksje na temat koncepcji dobrej administracji, która jest uznawana za niekwestionowany standard międzynarodowy na bazie Rady Europy, który odgrywa coraz większą rolę w odniesieniu do funkcjonowania współczesnej służby publicznej nadając mu charakter nawet „prawa człowieka trzeciej generacji”. Autor zwraca uwagę, że zróżnicowana kultura prawna i kultura polityczna determinują różne rozwiązania instytucjonalne i kompetencyjne w ramach realizacji jednej zasady „dobrej administracji”. W tym celu Rada Europy nie tylko formułuje standardy dotyczące dobrej administracji, ale pomaga również państwom członkowskim w ich praktycznej implementacji. Szczególną rolę w regionie europejskim w kreowaniu i upowszechnianiu standardu dobrej administracji odgrywa poza

Radą Europy także Unia Europejska, co jak podkreśla Autor za literaturą wspomaga zjawisko heterogenizacji (partykularyzacji) prawa, co współcześnie idzie w parze z jego postępującą multicentrycznością, która w warunkach globalizacji przekształca prawo w porządek policentryczny, tworzony przez niezależne centra decyzyjne, co dotyczy zarówno prawa krajowego, prawa międzynarodowego, prawa europejskiego, jak i regulacji tworzonych przez ponadnarodowe korporacje. W tym aspekcie podniesiono także rozważania dotyczące prawa do dobrej administracji, także w kategorii pozaprawnej jako wieloaspektowego zjawiska społecznego mającego wpływ na każdego człowieka.

Słowa kluczowe: dobra administracja, Rada Europy, zasady prawa, obywatel, międzynarodowe prawo administracyjne

Informacje o Autorze: DR DAWID STADNICZEŃKO, Instytut Nauk Prawnych, Akademia Ekonomiczno-Humanistyczna w Warszawie; adres do korespondencji: ul. Okopowa 59, 01-043 Warszawa, Polska; e-mail: dawid.stadniczenko@vizja.pl; <https://orcid.org/0000-0001-6826-3366>