

Maria Torres-Perez*

Article 41 of the Charter of Fundamental Rights of the European Union on the right to a good administration

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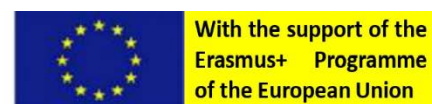
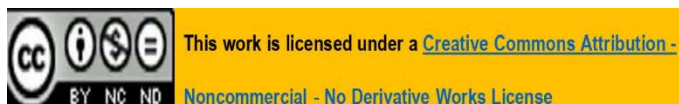
Hello, welcome. I am Maria Torres, and in this video I am going to talk about the right to good administration.

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The right to good administration, regulated in Article 41 of the Charter, is part of Title V on Citizenship of the European Union.

The right to good administration derives from the existence of the Union itself as a community of law, which acts in the social reality affecting the people living in the territory of its Member States.

Article 41 takes up a principle of law affirmed by case law prior to the Charter, and which has been actively supplemented over the years by various manifestations. The Charter thus brings together under the umbrella of the right to new administration a variety of instrumental or procedural rights recognized and outlined by Community case law. It must be recognized, however, that this is a novel



* Associate Professor of Public International Law. University of Valencia (Spain).

recognition in a fundamental rights text, since no previous international text recognized it in its articles.

It began to be recognized at EU level in the right to competition, associated with the principle of transparency and the democratic nature of the Union, and its first manifestation in the treaties was the right of access to documents set out in Article 255 of the Treaty establishing the European Community. Today, it is enshrined in Article 298 of the TFEU.

In any case, in general terms, suffice it to say that, although it is included in the Title devoted to citizenship, this right is recognized, as indicated in the first paragraph, for any PERSON in their dealings with any institution, body, office or agency of the Union, based on a series of principles which will serve to further develop it. These are: principles of openness, participation, transparency, accountability, effectiveness, and coherence.

Let us outline each manifestation in detail, always bearing in mind that they do not exhaust the right to good administration, but simply help to articulate it.

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The first manifestation contained in Article 41 refers to all matters being dealt with in a fair, impartial and proportional manner, i.e., respecting a fair balance between individual interests and the public interest, and all of this within a reasonable period.

The concepts of impartiality, non-discrimination, and proportionality, which are linked to other rights recognized in the Charter (such as those in Articles 20 and 21), are given concrete expression, for example, in the European Parliament's Code of Good Administrative Behaviour (Articles 5 to 9):

According to Art. 5 of the Code, when dealing with requests from the public and taking decisions, officials "shall ensure that the principle of equal treatment is respected". According to the Code, "members of the public who are in the same situation shall be treated in a similar manner" and "Where there is any difference in treatment, the official shall ensure that it is justified by the relevant objective features of the particular case", prohibiting "any unjustified discrimination between members of the public on grounds of nationality, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation".

Respect for the reasonable time limit, or speed of processing, will be twofold. If the rule in question establishes a time limit for processing, it will be the decision within that time limit. However, where there is no time-limit, the Court of First Instance has held that "in order to assess whether the length of the procedure is reasonable, account must be taken of the circumstances of each case and, in particular, the context of the case, the various stages of the

procedure which the institution concerned (in the case in question, the Commission) must follow, the complexity of the case and its importance for the various parties involved".

But what are the consequences of the expiry of the reasonable time-limit? These vary according to the possible regulatory regulation of the procedures, but the rule of the presumptive act cannot generally be affirmed. The individuals concerned will in any event be able to claim compensation for the damage caused, but to do so they will have to lodge the appropriate action for compensation.

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The second heading of Art. 41 contains the expression of three specific rights, which, recognized through the case law of the CJEU, the Charter brings together under the umbrella of "good administration".

The first of these is the traditional right to be heard. According to this article, the right to good administration includes, in particular: the right of everyone to be heard before an individual measure adversely affecting him or her is taken against him or her.

The second right is the right of everyone to have access to the file concerning him or her, while respecting the legitimate interests of confidentiality and professional and commercial secrecy.

Both rights are linked to other rights recognized in the Charter, such as the right of defence in Art. 48 or the right of access to documents in Art. 42.

Thirdly, this paragraph 2 refers to the obligation on the administration to state the reasons for its decisions, taking up the general requirement to state the reasons for any Community act or decision.

Community officials have an inexcusable duty to state the reasons for their administrative acts, indicating the grounds on which they are based, setting out clearly the relevant facts and the legal basis of the decision. However, the statement of reasons will also depend on the nature of the act. But, in any event, the statement of reasons must clearly and unequivocally show the reasoning of the institution, so that the persons concerned can know the reasons for the measure adopted in order to defend their rights and to know whether or not the decision is well founded and, on the other hand, the Community judicature can exercise its review of legality, without this being possible by means of explanations subsequent to the decision.

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The right to compensation for the damage referred to in paragraph 3 was already included in previous Treaties, such as Article 288 of the Treaty establishing the European Community or the current Article 340 of the Treaty on the Functioning

of the European Union. This right implies that every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

The conditions for the exercise of such a right have been strictly interpreted by European case law. Thus, in addition to the need for the existence of damage and the necessary causal link between the damage and the action of the institution or official, the applicant must show that there has been a sufficiently serious breach of a higher rule of law protecting individuals.

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Finally, Article 41 establishes the right of every person to address the institutions of the Union in one of the languages of the Treaties and to receive a reply in the same language, which is also enshrined in the citizenship status of the Treaty on the Functioning of the European Union.

In the case of a procedure initiated at the request of an interested party, the latter chooses the language of the procedure, and the administration must use that language for the conduct of the procedure and for all acts of investigation.

In ex officio proceedings, the case-law has followed the criterion laid down in Council Regulation No 1 of the Council of 15 April 1958 determining the

languages to be used in the European Economic Community: the language of the State to whose jurisdiction the subject in question is subject (in the case of legal persons, the language of their registered office), will be the one preferred. But multiple case law has denied the existence of a general principle of European law that guarantees every citizen the right to have everything that may affect his interests drafted in his language, whatever the circumstances may be.

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The Commission is committed to ensuring good administration in its relations with the public. It strives to put into practice the citizens' right to good administration and to prevent any instance of maladministration.

Since 2000 it has had a Code of Good Administrative Behaviour, adopted on 13 September 2000. However, a proposal for a regulation defining the rules and principles of a future 'European administrative law' in a general and binding manner is still required but does not appear to be forthcoming at the present time.

What happens, however, when such a right is not respected? Cooperation with the European Ombudsman is key in this respect. European citizens have the possibility to turn to the European Ombudsman in cases of maladministration and, in

certain cases, even to the CJEU. But these rights are limited to European citizens.

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That is all I had to say. Thank you very much for your attention.