

Ratification of the Treaty Establishing a Constitution for Europe and the Right to Good Administration

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Abstract

One of the aims of the Treaty Establishing a Constitution for Europe (hereinafter Treaty) was to make the Charter of Fundamental Rights of the European Union binding. It is especially significant in regard to the rights which are not included in any binding international human rights treaty. One of such rights is the right to good administration. The right to good administration is of especially high importance in the context of the Treaty because both aim to bring the citizen closer to the EU institutions.

The goal of the paper is to establish how can the right to good administration help to achieve the aim of the Treaty, i.e., to bring the citizens closer to the EU institutions and what consequences have the problems with the ratification of the Treaty for the right to good administration. To achieve this goal the paper contains the overview of the historical development of this right. There is examined the content of the right to good administration and the situation with the right to good administration in the constitutions of the Member States. At the end, the analysis shows what consequences have the problems with the ratification of the Treaty for the right to good administration

Key Words: right to good administration, the Charter of Fundamental Rights of the European Union, fundamental rights, European Code on Good Administrative Behaviour, public administration

JEL Classification – K19

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I. Introduction

It was in 2001 at Laeken, in Belgium, that the Heads of State or Government of the then 15 Member States of the European Union decided to convene a European Convention on the Future of the European Union with the task of drawing up a text amending the existing European Treaties. The Laeken Declaration stated that the European Union needs to become more democratic, more transparent and more efficient. It also has to resolve three basic challenges:

- 1) how to bring citizens, and primarily the young, closer to the European design and the European institutions
- 2) how to organise politics and the European political area in an enlarged Union;
- 3) how to develop the Union into a stabilising factor and a model in the new, multipolar world.¹

Consequently, one of the core tasks was to bring citizen closer to the European institutions. Declaration recognizes that this should be achieved, inter alia, by more democratic, transparent and efficient institutions. "Among the many questiones asked in the Declaration were: '[h]ow can the authority and efficiency of the European Commission be enhanced?' and 'how we can improve the efficiency of decision-taking and the workings of the institutions in a Union of some thirty Member States?'. Clearly, in order to meet these tasks, the Union needs a good administration."²

What is good administration? One of the ventures to address this question is the Charter of Fundamental Rights of the European Union (hereinafter the Charter), which recognized the right to good administration as a fundamental right. Nevertheless, the concept of good administration has more longstanding history.

II. Genesis of the Right to Good Administration

The origins of the concept of good administration can be found in the Prussia in the time of enlightenment. At that time the notion of good police (die gute Polizei) was used in the Prussia and it included the idea that the public administration in the performance of their functions acts impartially with the aim to ensure the observance of the law and the welfare of the citizens. Later the concept of good administration was forgotten although some elements of it was developed and included in other concepts, e.g. in the concept of the rule of law.

After World War II the concept of good administration started to develop again. The notion of principle of good administration appeared in the public law of Netherlands in the fifties. Belgium borrowed this concept from Netherlands soon. Starting from the sixties the principle of good administration is developed by the courts of the European Union.³

In the beginning the notion of the principles of good administration was used to denote objective principles which state how to organize the public administration and how the public administration should act. The principle of good administration did not give to the citizen a subjective right.⁴

In 1999 it was decided to elaborate the Charter. In February 2, 2000 European Ombudsman Jacob Söderman delivered a speech to the Convention which was responsible for elaboration of the Charter. He called the Convention to take into account modern developments in human rights standards and in the relationship between the citizen and the public administration and include the right to good administration into the Charter. European Ombudsman stressed that the citizen has a right that his or her affairs be dealt with properly, fairly and promptly by an open, accountable and service-minded public administration. He also stated that inclusion of the rights to good administration would help to make the 21st century the "century of good administration".⁵

The Charter was adopted on December 7, 2000. The Charter contains not only the rights which can be found in different international human rights treaties, but also new rights. One of the most important novelties is that the right to good administration is included in the Charter as a fundamental right. Hence, the Charter transforms some elements of the objective principle into a subjective right to good administration.⁶

The right to good administration guarantees Article 41 of the Charter. It states:

“1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

- the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community 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.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.”

Consequently, this article establishes eight elements of the right to good administration *expressis verbis*:

1. right to an impartial administration;
2. right to fair administration;
3. right to a speedy handling of one's affair;
4. right to be heard
5. right of access to one's file;
6. right to a reasoned decision;
7. right to compensation for damages;
8. right to official correspondence in one's language.

III Content of the Right to Good Administration

1. Right to an Impartial Administration

Paragraph 1 of the Article 41 of the Charter states that every person has the right to have his or her affairs handled impartially. European Code on Good Administrative Behaviour (hereinafter the Code)⁷ which is endorsed by the European Parliament in the form of a resolution⁸ explains the notion of impartiality. Article 8 of the Code states:

“1. The official shall be impartial and independent. The official shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.

2. The conduct of the official shall never be guided by personal, family or national interest or by political pressure. The official shall not take part in a decision in which he or she, or any close member of his or her family, has a financial interest.”

A Handbook “Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons” of the Council of Europe also explains the notion of impartiality. It is stated in the Handbook that an administrative act must not be influenced by the private or personal interests or prejudices of the person taking it. Therefore, no civil servant or employee of an administrative authority should be involved in the taking of an administrative act in a matter concerning his or her own financial or other interests, or those of his or her family, friends or opponents or in any appeal against an administrative act which he himself or she herself has taken, or where other circumstances undermine his or her impartiality.⁹

2. Right to Fair Administration

Paragraph 1 of the Article 41 of the Charter states that every person has the right to have his or her affairs handled *fairly*. Article 11 of the Code states: “*The official shall act impartially, fairly and reasonably.*”

The notion of fairness is an open-ended one and it gives an opportunity to interpret it and another subjective rights both directly mentioned in the Article 41 of the Charter, and directly not mentioned in the Article 41 of the Charter can be derived from this notion. Case-law of the European Court of Human Rights also shows that the notion of fairness, which is included in the Article 6 of the European Convention on Human Rights, comprise further guarantees for fair trial directly not mentioned in the Convention – equality of arms, right to legal representation, right to a reasoned judgment etc.¹⁰

For the interpretation of the right to fair administration the Code also can be used. The Code comprises 27 articles from which 21 article explain the right to good administration. According to the Code the right to good administration includes:

- 1) lawfulness;
- 2) absence of discrimination;
- 3) proportionality;
- 4) absence of abuse of power;
- 5) impartiality and independence;
- 6) objectivity;
- 7) legitimate expectations, consistency and advice;
- 8) fairness;
- 9) courtesy;
- 10) reply to letters in the language of the citizen;
- 11) acknowledgement of receipt and indication of the competent official;
- 12) obligation to transfer to the competent service of the Institution;
- 13) right to be heard and to make statements;
- 14) reasonable time-limit for taking decisions;
- 15) duty to state the grounds of decisions;
- 16) indication of the possibilities of appeal;
- 17) notification of the decision;
- 18) data protection;
- 19) obligation to give the information;
- 20) right to public access to documents;
- 21) obligation of keeping of adequate records.

It follows that, i.e., courtesy also can be recognized as the element of the right of good administration.

3. Right to a Speedy Handling of one's Affair

Paragraph 1 of the Article 41 of the Charter guarantees the right to have one's affairs handled within a reasonable time. Advocate General Jacobs in his opinion stressed that slow administration is bad administration. He stated there is no doubt that the principles of good administration require the Community administration, in all procedures which may lead to the adoption of a measure adversely affecting the interests of one or more individuals, to avoid undue delay and to ensure that each step in the procedure is carried out within a reasonable time following the previous step.¹¹

There are generally no precise time-limits on administrative action in the legislation of the European Union. Article 17 of the Code explains what a reasonable time-limit for taking decision is:

“1. The official shall ensure that a decision on every request or complaint to the Institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. The same rule shall apply for answering letters from members of the

public and for answers to administrative notes which the official has sent to his superiors requesting instructions regarding the decisions to be taken.

2. If a request or a complaint to the Institution cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the official shall inform the author thereof as soon as possible. In that case, a definitive decision should be notified to the author in the shortest time."

However the Courts of European Union take account of the circumstances of each case to determine whether a decision has been taken in a reasonable time-limit.¹² European Court on Human Rights also has recognized that the reasonableness of the length of the court proceedings depends on the particular circumstances of the case. Factors that are always taken into account are the complexity of the case, the conduct of the applicant and the conduct of the competent authority.¹³

4. Right to Be Heard

Paragraph 2 of the Article 41 of the Charter establishes the right of every person to be heard before any individual measure which would affect him or her adversely is taken. Although, the principle *audiatur altera pars* derived from the Roman law it is established in a fragmented and inconsequent manner in the legislation of the European Union. There are some provisions in competition law, antidumping and trademark law.¹⁴ The Courts of the European Union also has recognized the right to be heard. In case *New Europe Consulting and Brown v Commission* the Court of First Instance stated that the principle of good administration includes the right of the person to be heard before any individual measure which would affect him or her adversely is taken.¹⁵ In case *Detlef Nölle v Council of the European Union and Commission of the European Communities* the Court of First Instance recognized that the principle of good administration includes, in particular, the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case, the right of the person concerned to make his views known and to have an adequately reasoned decision.¹⁶

Article 16 of the Code states:

"1. In cases where the rights or interests of individuals are involved, the official shall ensure that, at every stage in the decision making procedure, the rights of defence are respected.

2. Every member of the public shall have the right, in cases where a decision affecting his rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken."

A Handbook "Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons" of the Council of Europe explains that the right to be heard has a two-fold rationale:

1) it is part of the private person's right to fair trial in case where an administrative authority takes the initiative of an administrative procedure which may affect the private person's rights, interests or liberties;

2) it should allow the administrative authority to take the best act possible, i.e. the act which is based on an accurate and equilibrated assessment of facts and arguments.¹⁷

The right to be heard also includes the right to be advised and assisted by counsel and the right to remain silent. The right to access to one's file can be treated as a component of the right to be heard. However, this right is included in the Charter as an autonomous right.¹⁸

5. Right of Access to One's File

Paragraph 2 of the Article 41 of the Charter guarantees the right of access to one's file: the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy. This right is linked with the right to be heard because the right to submit evidence and arguments can not be effective if the person is not allowed to access to all files.

The right of access to one's file means that the person has access to all non-confidential files and it is up to interested party to determine which documents are relevant for him. Nevertheless, a difference should be made between two rights – the right of access to one's file and general right of access to documents of public institutions. The general right of access to documents is derived from the principle of democracy and the specific purpose of this right is to bring about open government and accountability. The right of access to one's file is procedural right and the purpose of this right is to ensure the equality of arms in the administrative procedure.¹⁹ It means that the right of access to one's file is limited to materials of case and it does not guarantee access to all documents on person at the disposal of authority.

6. Right to a Reasoned Decision

Paragraph 2 of the Article 41 of the Charter guarantees the right to a reasoned decision. This right is based on Article 253 of the Treaty Establishing the European Community which states: *"Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty."* This article concerns both the legislative acts and administrative acts.

The right to a reasoned decision has two functions: to ensure external control and to ensure internal control. According to the case-law of the Courts of the European Union in ensuring external control the right to a reasoned decision has two aims. Firstly, reasons are necessary for person to decide whether he or she should appeal against the decision. Secondly, it serves to ensure that the Court can exercise its powers to review the legality of the measure. The reasoning of the decision also promotes transparency of administrative actions.²⁰ The right to a reasoned decision ensures internal control by creating an obligation for authority to reconsider its decision and review whether there all conditions for taking a measure exist.²¹

Article 18 of the Code explains the right to a reasoned decision:

- "1. Every decision of the Institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.*
- 2. The official shall avoid making decisions which are based on brief or vague grounds or which do not contain individual reasoning.*
- 3. If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of the decision and where standard replies are therefore made, the official shall guarantee that he subsequently provides the citizen who expressly requests it with an individual reasoning."*

7. Right to Compensation for Damages

Paragraph 3 of the Article 41 of the Charter establishes the right to compensation for damages. This paragraph is a quite exact reproduction of the Article 288 of the Treaty Establishing the European Community. Article 288 provides that the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. This article concerns both damages caused by an administrative act and damages caused by legislative act.²² However, if we consider the right to compensation for damages as an element of the right to good administration it has to be recognized that such interpretation would be too extensive. The right to good administration can be applied to relations of person with legislature or judiciary only when the legislature or judiciary is performing some functions in the field of State administration.

8. Right to Official Correspondence in One's Language

Paragraph 4 of the Article 41 of the Charter provides the right to write to the institutions of the Union in one of the languages of the Treaties and the right to have an answer in the same language. The very first regulation of European Community concerned the language right.²³ The right to official correspondence in one's language bases on the Article 21 of the Treaty Establishing the European.

Article 13 of the Code also explains this right:

"The official shall ensure that every citizen of the Union or any member of the public who writes to the Institution in one of the Treaty languages receives an answer in the same language. The same shall apply as far as possible to legal persons such as associations (NGOs) and companies."

IV The Right to Good Administration in the Constitutions of the Member States of the European Union

1. The Right to Good Administration as a Fundamental Right

Today there are 25 Member States of the European Union. The notion of good administration (good governance) is mentioned *expressis verbis* in only one of the constitutions of the Member States. Article 21 of the Constitution of Finland states:

"Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice."

Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act."

This provision makes it clear that the right to good administration as a fundamental right in Finland includes the following rights: right to a due and speedy process, right to be heard, right to reasoned decision and other rights not expressly mentioned in the Constitution.

Nevertheless it does not mean that no guarantees of good administration can be found in the constitutions of other Member States. Constitutions of eight Member States guarantee **the right to compensation for damages**. This right can be found in the Article 36 of the Charter of Fundamental Rights and Freedoms of the Czech Republic, Article 25 of the Constitution of the Republic of Estonia, Article 92 of the Constitution of the Republic of Latvia, Article 30 of the Constitution of the Republic of Lithuania, Article 77 of the Constitution of the Republic of Poland, Article 22 of the Constitution of the Portuguese Republic, Article 46 of the Constitution of the Slovak Republic and Article 26 of the Constitution of the Republic of Slovenia.

Constitutions of five Member States contain similar provisions as Paragraph 4 of Article 41 of the Charter. The **use of language** in communication with public institutions is the subject to Article 30 of the Constitution of Belgium, Article 51 of the Constitution of the Republic of Estonia, Article 104 of the Constitution of the Republic of Latvia, Article 29 of the Constitution of the Grand Duchy of Luxembourg and Article 17 of the Constitution of Finland.

Constitutions of 16 Member States guarantee **the right to petition**. A number of these constitutions simply states that everyone have the right to submit petitions, proposals and complaints to public institutions. Such guarantee is included in nine constitutions – Article 28 of the Constitution of Belgium, Article 18 of the Charter of Fundamental Rights and Freedoms of the Czech Republic, Article 27 of the Constitution of the Grand Duchy of Luxembourg , Article 5 of the Constitution of the Kingdom of the Netherlands, Article 27 of the Constitution of the Slovak Republic, Article 45 of the Constitution of the Republic of Slovenia, Article 29 of the Spanish Constitution, Article 17 of the Basic Law of the Federal Republic of Germany and Article 64 of the Constitution of the Republic of Hungary. Article

33 of the Constitution of the Republic of Lithuania provides that the procedure for exercising this right shall be established by law. Article 63 of the Constitution of the Republic of Poland establish the obligation of public institutions not only to receive petitions, but also to deal with them: *“Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person - with his consent - to organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statute.”* Article 46 of the Constitution of the Republic of Estonia establishes an obligation to give an answer: *“The procedure for responding shall be provided by law.”* Article 104 of the Constitution of the Republic of Latvia states: *“Everyone has the right to address submissions to State or local government institutions and to receive a materially responsive reply.”*

Federal Constitutional Court of Germany has recognized that the right to petition guaranteed in the Article 17 of the Basic Law of the Federal Republic of Germany also includes the right to receive an answer. Furthermore Federal Constitutional Court has proclaimed that the right to receive an answer can not be restricted to an answer, that the petition has been received by the competent institution. The right to petition means that the petition has to be considered by the competent authority and the way of resolving the problem has to be shown in the written answer to the petitioner. As the Federal Constitutional Court stated converse allegation would deny the right to petition its actual meaning. It would not be understandable to include such “illusory rights” in the catalogue of fundamental rights.²⁴

European Court on Human Rights has several times emphasized that the European Convention on Human Rights is designed to “guarantee not rights that are theoretical or illusory but rights that are practical and effective”.²⁵ The Constitutional Court of Latvia also has recognized if some rights are included in the fundamental law, the State cannot relinquish them. These rights do not have just a declarative nature.²⁶

Taking all aforementioned into account it has to be stated - for not being an illusory right the right to petition also has to include the right to receive an answer **within a reasonable period of time**. Article 52 of the Constitution of the Portuguese Republic reflects this idea: *“Every citizen shall possess the right to individually, or jointly with others, submit petitions, representations, claims or complaints in defence of their rights, this Constitution, the laws or the general interest to bodies that exercise sovereign power, the autonomous regions’ self-government bodies or any authority, as well as the right to be informed of the result of the consideration thereof within a reasonable period of time.”*

Article 10 of the Constitution of Greece guarantees **the right to a reasoned answer**: *“Each person, acting on his own or together with others, shall have the right, observing the laws of the State, to petition in writing public authorities, who shall be obliged to take prompt action in accordance with provisions in force, and to give a written and **reasoned reply** to the petitioner as provided by law.”*

Article 29 of the Constitution of the Republic of Cyprus guarantees the right to petition and also expressly establish **the right to an efficient consideration of the petitions, the right to a reasoned decision and the right to receive an answer within a reasonable period of time**: *“Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.”*

One of the elements of the right to good administration is **the right to be heard**. Without the Constitution of Finland this right can be found in the Article 20 of the Constitution of Greece too. Paragraph 1 of the Article 20 establishes the right to be heard in the court and the Paragraph 2 of the Article 20 states that the right to be heard also applies in administrative procedure. Article 18 of the Constitution of the Kingdom of the Netherlands

guarantees the right to be legally represented in administrative proceedings to everyone. The right to be represented as stated before is an element of the right to be heard and it means also an element of the right to good administration.

2. Principle of Good Administration in Other Parts of Constitutions

All aforementioned guarantees are included in the parts on fundamental rights of the Constitutions of the Member States. However some constitutions also contain provisions on good administration in other parts. Besides sometimes those provisions are formulated as guaranteeing the subjective rights of person.

The Constitution of the **Italian Republic** has a section which regulates public administration. Article 97 of the Constitution of the Italian Republic states that public offices are organized according to the provisions of law, so as to ensure efficiency and the impartiality of administration. Article 153 of the Constitution of the **Republic of Poland** provides that a corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State's obligations.

The Constitution of the **Portuguese Republic** contains very detailed regulation on public administration. Article 266 of this constitution establishes the fundamental principles for work of public administration and provides that administrative bodies and agents in the performance of their functions shall act with respect for the principles of equality, proportionality, justice, impartiality and good faith. Article 267 states that public administration shall be structured in such a way as to avoid bureaucratisation. This part of the Constitution of the Portuguese Republic which regulates public administration also contains Article 268 "Citizens' rights and guarantees". This article provides that:

„1. Citizens shall possess the right to be informed by the Administration whenever they so request as to the progress of the processes in which they are directly interested, as well as to be made aware of such decisions as are taken in relation to them.

2. Without prejudice to the law governing matters of internal and external security, criminal investigation and personal privacy, citizens shall also possess the right of access to administrative files and records.

3. Administrative acts shall be subject to notification to the interested parties in the form laid down by law, and when they affect rights or interests that are protected by law, shall be based on express grounds that can be accessed by the parties.

4. Citizens shall be guaranteed effective judicial oversight of those of their rights and interests that are protected by law, particularly including the recognition of the said rights and interests, the impugnation of any administrative act that harms their rights and interests, regardless of its form, the issue of positive rulings requiring the practise of administrative acts that are due by law, and the issue of adequate injunctions.

5. Citizens shall also possess the right to challenge administrative rules which possess external force and which harm any of their rights or interests that are protected by law.

6. For the purposes of (1) and (2) above the law shall lay down a maximum time limit for responses by the Administration."

Article 269 of the Constitution of the Portuguese Republic states that the right to be heard and to a defence shall be guaranteed to persons who are the object of disciplinary proceedings.

Part 4 of the **Spanish** Constitution contains provisions on government and administration. There is Article 103 included in this part which states that the public administration shall serve the general interest in a spirit of objectivity and shall act in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, and in full subordination to the law. Article 105 of the Spanish Constitution provides: "The law shall make provision for:

a) The hearing of citizens, directly, or through the organizations and associations

recognized by the law, in the process of drawing up the administrative provisions which affect them.

b) The access of citizens to administrative files and records, except to the extent that they may concern the security and defence of the State, the investigation of crimes and the privacy of persons.

c) The procedures for the taking of administrative action, with due safeguards for the hearing of interested parties when appropriate.”

Article 106 of the Spanish Constitution states:

“1. The Courts shall check the power to issue regulations and ensure that the rule of law prevails in administrative action, and that the latter is subordinated to the ends which justify it.

2. Private individuals shall, under the terms laid down by law, be entitled to compensation for any harm they may suffer in any of their property and rights, except in cases of force majeure, whenever such harm is the result of the operation of public services.”

3. The Jurisprudence of the Constitutional Court of the Republic of Latvia

As mentioned before the Constitution of the Republic of Latvia guarantees the right to compensation of damages, the right to petition and the right to receive an answer in the Latvian language as fundamental rights. Nevertheless the Constitutional Court of the Republic of Latvia has recognized that the principle of good administration follows from Article 1 of the Constitution of the Republic of Latvia²⁷ and incorporates also fair implementation of procedures in a reasonable time and other provisions, the objective of which is to achieve observation of human rights by the state administration.²⁸

The Constitutional Court of the Republic of Latvia in the decision in case No. 2004-21-01 establishes that the principle of good administration follows from Article 89 of the Constitution of the Republic of Latvia.²⁹ Article 89 is included in the Chapter 8 of the Constitution of the Republic of Latvia which guarantees fundamental rights. The Constitutional Court of the Republic of Latvia has not reflected in the decision how it has come to this conclusion. Nevertheless it follows from other decisions of the Constitutional Court that Article 89 guarantees the right to an effective remedy as it does the Article 13 of the European Convention on Human Rights.³⁰ Article 13 of the European Convention on Human Rights states that everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority. European Court on Human Rights has recognized that not only the court can be an effective remedy, but also administrative recourse. The powers and procedural guarantees of a particular authority are relevant factors when determining whether a particular remedy is effective.³¹ The Constitution of Finland also provides the right to good administration in the Article which establishes procedural guarantees in the courts and other authorities.

The jurisprudence of the Constitutional Court of the Republic of Latvia shows that even if the right to good administration or its elements are not *expressis verbis* mentioned in the constitution, it is possible to give to it a constitutional rank.

V The Treaty Establishing a Constitution for Europe and the Right to Good Administration

Treaty Establishing a Constitution for Europe was a response of the Convention on the Future of the European Union to the Laeken Declaration. The Charter was included in the Treaty Establishing a Constitution for Europe as a Part II. By incorporating the Charter into the Treaty Establishing a Constitution for Europe, the Member States are establishing a common ground of mutual values, for which they stand and by which they define themselves.

As the Charter is not legally binding, one of the aims of the Treaty Establishing a Constitution for Europe was to make the Charter binding. Ratification of the Treaty failed. What consequences does it have for the right to good administration?

The prime objective underlying the Charter was to make EU citizens' rights more clearly visible. The text does not establish new rights but assembles existing rights that were previously scattered over a range of sources and therefore not always easy to trace. These sources include the European Convention on Human Rights, as well as various international conventions drawn up by the Council of Europe, the United Nations and the International Labour Organisation. But they also derive from EU treaties themselves, and from the case law of the European Court of Justice.³²

As remarked already before, part of the guarantees included in the Article 41 bases on the provisions of the Treaty Establishing the European Community. The right to a reasoned decision, the right to compensation for damages and the right to official correspondence in one's language are based on the Article 253, Article 288 and Article 21 Treaty Establishing the European Community. This means that those rights are legally binding now without incorporation the Charter into the Treaty.

Principle of good administration is recognized as a general principle of law of the European Union by the Courts. The case-law of the Court of First Instance demonstrates a tendency to recognize an autonomous and justiciable principle of good administration. It can be stated that Article 41 of the Charter could be seen as a compilation of separate rights developed by the Court.³³

It follows from all aforementioned that formally the failure of ratification of the Treaty Establishing a Constitution for Europe has no negative consequences to the binding legal force of the right to good administration. Nevertheless, Article III-365 of the Treaty Establishing a Constitution for Europe states that any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to him or her, and against a regulatory act which is of direct concern to him or her and does not entail implementing measures." It means that also in case of violation of fundamental rights including the right to good administration the person would have the protection of the Court of Justice. It would certainly strengthen the confidence of the citizens to democracy of the European Union.

It has to be also recognized that the importance of the fundamental rights would be stressed by the incorporation of them into the Treaty and giving the Charter constitutional status. Inclusion of the Charter in the Treaty Establishing a Constitution for Europe could have the impact also to the development of the concept of good administration in the Member States. At the time just one constitution of Member States *expressis verbis* mention good administration. Recognition of the right to good administration at the highest level could help to create fair procedures in the institution of European Union and institutions of Member States. And the fair procedures in the institutions could help to strengthen the confidence of citizens to institutions and to bring the citizen closer to Union.

¹ Laeken Declaration on the future of the European Union - <http://europa.eu.int/abc/doc/off/bull/en/200112/i1027.htm>

² Kanska K. Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights – European Law Journal, Vol.10, No.3, May 2004, p.297

³ Levits E. Labas pārvaldības princips – 7.-12.lpp.

⁴ Ibid, 12.lpp.

⁵ Söderman J. Public Hearing on the draft Charter of Fundamental Rights of the European Union, Brussels, 2 February 2002. Preliminary remarks – <http://www.euro-ombudsman.eu.int/speeches/en/charter1.htm>

⁶ Kanska K. Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights – European Law Journal, Vol.10, No.3, May 2004, p.300.

⁷ The European Code on Good Administrative Behaviour- http://www.euro-ombudsman.eu.int/code/pdf/en/code_en.pdf

⁸ European Parliament resolution on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour, C5-0438/2000 - 2000/2212 (COS) -

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⁹ Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons. A Handbook // Strasbourg: Council of Europe Directorate of Legal Affairs– 1996, p.13

¹⁰ Harris D.J., O’Boyle M., Warbrick C. Law of the European Convention on Human Rights // London, Dublin, Edinburgh: Butterworths – 1995, p. 202-218

¹¹ Opinion of Advocate General Jacobs in case C-270/99 P, Z. v European Parliament, 22.0.2001, para 40

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¹³ Harris D.J., O’Boyle M., Warbrick C. Law of the European Convention on Human Rights // London, Dublin, Edinburgh: Butterworths – 1995, p. 223

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¹⁵ Urteil des Gerichts Erster Instanz der Europäischen Gemeinschaften in der Rechtssache T-231/97, *New Europe Consulting and Brown v Commission*, 09.07.1999, paras 38-44

¹⁶ Judgment of the Court of First Instance in case T-167/94, *Detlef Nölle v Council of the European Union and Commission of the European Communities*, 18.09.1995, para 73

¹⁷ Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons. A Handbook // Strasbourg: Council of Europe Directorate of Legal Affairs– 1996, p.17

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²⁰ Ibid, p.320

²¹ Calliess Ch., Ruffert M. Kommentar zu EU-Vertrag und EG-Vertrag // Neuwied, Kriftel: Luchterhand – 1999, s. 1922-1923

²² Ibid, s. 2075-2080

²³ EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community - <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:31958R0001:EN:HTML>

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²⁵ Judgment of the European Court on Human Rights in case *Öcalan v. Turkey*, 12.03.2003.

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²⁷ Article 1 of the Constitution of the Republic of Latvia: “*Latvia is an independent democratic republic.*”

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