

**Tamar Gvaramadze\***

## **Fair Administrative Procedures and European Standards**

*The article reviews important international standards for the definition of the right to fair administrative procedures guaranteed by the Constitution of Georgia. It is important to ascertain the constitutional standard of rights and also determine the impact on already well-established standards of administrative proceedings within the framework of administrative law.*

*The research develops the opinion that the gradually advanced principles of modern good administration include the right to good governance, which refers to the right to fair administrative procedures protected by the Constitution of Georgia. As Georgia belongs to the European legal system, the practice of the European Court of Human Rights and the decisions of the Committee of Ministers of the Council of Europe are considered when discussing international standards. The article also examines the practice of the Constitutional Court of Georgia concerning the right to fair administrative procedures at the time of research.*

*In conclusion, following the practice of the European Court of Human Rights are the elements that define the right to fair administrative procedures, including making decisions: within a reasonable time, after a thorough examination of the circumstances accompanied by proper justification, protection of the legitimate trust of interested parties, making the balance between public and private interests, writing out the procedures clearly and obviously, etc.*

**Keywords:** *Fair Administrative Procedures, Good Governance, Human Rights, European Court of Human Rights.*

### **1. Introduction**

As a result of the most important changes made in the Constitution of Georgia in 2017, the supreme law of the country assigned the rights of academic freedom, physical inviolability and access to the internet to the number of fundamental human rights.<sup>1</sup> Also, it was included the rights to fair administrative procedures, access to public information, informational self-determination and compensation for damages caused by public authorities.<sup>2</sup> The first paragraph of Article 18 of the Constitution of Georgia states: “Everyone has the right to a fair trial conducted under the authority of

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<sup>1</sup> *Kublashvili K.*, Shortcomings and Challenges of the New Edition of the Constitution of Georgia, in Collection: Review of Constitutional Law, *Vardzelashvili K. (ed.)*, #14, Tbilisi, 2020, 85-86, <<https://ewmi-ruleoflawgeo.org/uploads/files/597114fpGEO.pdf.pdf>> [14.08.2023].

<sup>2</sup> Constitution of Georgia, Articles 17, 18, 27, The Gazette of the Parliament of Georgia, 31-33, 24/08/1995.

an administrative body within a reasonable time."<sup>3</sup> The fair administrative proceedings as a right are entrenched in Georgian legislation. The most important principles and procedural guarantees of administrative proceedings have been established by the General Administrative Code since 2000<sup>4</sup> however, since 2017, the right to fair administrative procedures has acquired constitutional legal authority and significance.

The article aims to review the important international standards for the interpretation of the mentioned constitutional norm. On the one hand, it is valuable to provide the constitutional standard of the right. On the other, it is also essential to determine the extent of influence on already well-established standards of administrative proceedings within the framework of administrative law. In addition to the practical importance, this is the first attempt to discuss the issue in the academic space from this perspective which can inspire more and more in-depth scientific discussions in the future.

According to Professor Paata Turava, the basic right to fair administrative procedures binds three branches of government<sup>5</sup> It makes legislative authority impose a law regulating administrative proceedings by the basic rights guaranteed by the constitution whereas the judicial and executive authorities are obliged to interpret the norms of the law in compliance with basic rights and ensure their enforcement accordingly.<sup>6</sup> The research and analysis of the standard of the right in all three directions is significant, however, within the framework of the article, the administrative fair procedures protected by the basic right are discussed to implement public administration. The practice of the Constitutional Court of Georgia is of great importance in defining the basic rights established by the Constitution. Taking into account a short period after implementing the 2017 amendments to the Constitution of Georgia and the long-term consideration of cases in the Constitutional Court, the court has made interpretations of the right to fair administrative proceedings in only a few cases which are briefly reviewed in the article.

As already mentioned, the article discusses international standards to define the right to fair administrative proceedings, which is one of the first attempts in the Georgian academic space. Georgia belongs to the European legal system, and when it comes to legal standards, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the European Convention) and the practice<sup>7</sup> of the European Court of Human Rights (hereinafter referred to as the Strasbourg Court), as well as the standards set by European Council of Ministers following the decisions of the committee<sup>8</sup>, acquire particular importance.

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<sup>3</sup> Ibid, Article 18.

<sup>4</sup> Law of Georgia "General Administrative Code of Georgia", Legislative Herald of Georgia, 32(39), 15/07/1999.

<sup>5</sup> *Turava P.*, Fair administrative proceedings as a basic constitutional right and its institutional guarantee, in the collection of articles: Protection of human rights: legislation and practice, *Korkelia K. (ed.)*, Tbilisi, 2018, 248, <<https://library.iliauni.edu.ge/wp-content/uploads/2021/06/42.-adamianis-uphlebatha-datsva-kanonmdbloba-da-praqtika-statiatha-krebuli.pdf>> [14.08.2023] [14.08.2023].

<sup>6</sup> Ibid.

<sup>7</sup> *Gvaramadze T.*, Georgian Administrative Law: From Soviet Era to European Standards, Book Title: Good Administration and the Council of Europe: Law, Principles, and Effectiveness, *Shtelkens Ul. Andrijauskaitė Ag. (eds.)*, Oxford University Press, 2020, 707.

<sup>8</sup> *Shtelkens Ul. Andrijauskaitė Ag.*, Added Value of the Council of Europe to Administrative Law: The Development of Pan European General Principles of Good Administration by the Council of Europe and

The practice of the Strasbourg Court is appreciable because of the amendments made to the law of Georgia on normative acts, which indicate that the application of the norms of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols, the definitions of the European Court of Human Rights are considered the official interpretations of the Convention norms and Additional Protocols. And the applicant of the mentioned norms can rely on these definitions.<sup>9</sup> Thus, the practice of the Strasbourg Court is of special importance for the formation and development of the domestic legal standard.

The article is concerned with the principles of good administration, however, considering the purpose and scope of the article, it is impossible to discuss in depth the concepts of public administration and good governance, as well as their relationship.<sup>10</sup> In addition, the article does not review different scientific opinions<sup>11</sup> about the correlation between public/good governance and the right to fair administrative procedures. The article accepts the opinion of some scientists<sup>12</sup> based on Article 41 of the EU Charter of Fundamental Rights which establishes the right to good administration.<sup>13</sup> Following the mentioned opinion, the gradually developed concept of modern good governance includes the right to good administration which refers to the right to fair administrative procedures protected by the Constitution of Georgia.

The methodology of the research involves general scientific (historical) analysis and special-normative, dogmatic, systematic, and comparative-legal research methods.

## **2. The Interpretations of the Constitutional Court of Georgia**

The interpretations of the Constitutional Court of Georgia referring to fair administrative proceedings are scarce because they are only related to the evaluations made at the stage of accepting a few claims for consideration.<sup>14</sup> Despite the scarcity, these interpretations are still important. In the

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their Impact on the Administrative Law of its Member States, Discussion Papers, 86, German Research Institute for Public Administration Speyer, 2017, 34-43.

<sup>9</sup> Law of Georgia “On Normative Acts”, Prima Article 7, Legislative Gazette, 33, 09/11/2009 (in Georgian).

<sup>10</sup> *Comp. Kalichava K.*, Public Administration in the Perspective of Administrative Science, Textbook of administrative science, Volume IV, *Khubua G., Kalichava K. (eds)*, Publications of the Institute of Administrative Sciences of TSU, Tbilisi, 2018, 63-86 (in Georgian).

<sup>11</sup> *Comp. Eberhard B.*, The Concept of Public Administration, Handbook of Administrative Science, Volume IV, *Khubua G., Kalichava K. (eds.)*, Publications of the Institute of Administrative Sciences of TSU, Tbilisi, 2018, 89-100 (in Georgian).

<sup>12</sup> *Stelkens Ul., Andrijauskaitė Ag.*, Good Administration and the Council of Europe, Law, Principles, and Effectiveness, *Stelkens Ul., Andrijauskaitė Ag. (eds.)*, Oxford University Press, First Edition, 2020, 109-112.

<sup>13</sup> Charter of Fundamental Rights of the European Union, (2000/C 364/01), Official Journal of the European Communities, 18.12.2000, <[https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf)> [17.08.2023].

<sup>14</sup> Ruling of the Constitutional Court of Georgia No. 2/15/1403, in the case of Sulkhan Gvelesiani v. Parliament of Georgia, 2019, <<https://constcourt.ge/ka/judicial-acts?legal=1794&scrollheight=2906.39990234375>> [16.08.2023], Constitutional Court of Georgia Judgment No. 1/13/1560, in the case of Zauri Shermazanashvili v. Parliament of Georgia, 2021, <<https://constcourt.ge/ka/judicial-acts?>> [16.08.2023] (in Georgian).

ruling<sup>15</sup> on the case of Sulkhan Gvelesiani v. Parliament of Georgia, the court indicates that the constitutionally guaranteed right to timely and fair consideration of the case by an administrative body, within the framework of administrative proceedings, creates a procedural guarantee of protection of constitutional rights and/or-+legal interests.<sup>16</sup> Simultaneously, the Constitutional Court defines that the right to fair administrative proceedings is not related to providing the scope of material rights, but only makes the possibility of effective protection of such rights and interests.<sup>17</sup> Under the assessment of the Constitutional Court, the right is intervened when regulations limit the procedural guarantees related to the timely and fair consideration of the case in the administrative body.<sup>18</sup> However, the Court still has not discussed the meaning of the timeliness of a hearing and the elements of a fair hearing. For example, whether this right includes complying with the constitutional standard of convincing evidence, which is implicitly indicated in one of the rulings.<sup>19</sup>

Referring to one of the cases,<sup>20</sup> which was not accepted for consideration, the Constitutional Court notes that there is no universal definition of the concept of a fair process and invariable criteria. According to this assessment, the fairness of the process does not depend on the presence or absence of one specific aspect or element of the process in isolation, but on the course of the proceedings as a whole. Within the scope of this dispute, the court also indicated that the right to a fair trial includes, among other things, the right to impartial proceedings. The court points out that the requirement of impartiality to the administrative body applies not only to the decision but also to the process through which the decision is made. Following the court, the administrative body should perform its functions without nepotism or bias towards the participant in the proceedings. The court considered that the protection of the right to a fair procedure and ensuring impartiality could be achieved by inviting a relevant specialist/expert, based on which the administrative body has to make an unbiased decision.<sup>21</sup>

In the future, identifying the legal standard and defining the right by the court will be most important, therefore, the court indicates that the scope and extent of the right is determined following the relevant practice of the Constitutional Court.<sup>22</sup> For example, on February 25, 2021, the claim<sup>23</sup> was

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<sup>15</sup> Ruling of the Constitutional Court of Georgia No. 2/15/1403, in the case of Sulkhan Gvelesiani against the Parliament of Georgia, 2019, <<https://constcourt.ge/ka/judicial-acts?legal=1794&scrollheight=2906.39990234375>> [16.08.2023] (in Georgian).

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ruling of the Constitutional Court of Georgia No. 2/15/1403 Ruling in the case of Sulkhan Gvelesiani v. Parliament of Georgia, 2019, <<https://constcourt.ge/ka/judicial-acts?legal=1794&scrollheight=2906.39990234375>> [16.08.2023] (in Georgian).

<sup>19</sup> Ruling of the Constitutional Court of Georgia No. 1/13/1560, in the case of Zauri Shermazanashvili v. Parliament of Georgia, 2021, <<https://constcourt.ge/ka/judicial-acts?legal=11622&scrollheight=3020>> [16.08.2023] (in Georgian).

<sup>20</sup> Ruling of the Constitutional Court of Georgia No. 1/6/1608, in the case of Matsatso Tefnadze against the Government of Georgia, 2022, <<https://constcourt.ge/ka/judicial-acts?legal=13669&scrollheight=4591.2001953125>> [16.08.2023] (in Georgian).

<sup>21</sup> Ibid.

<sup>22</sup> Ruling of the Constitutional Court of Georgia No. 2/15/1403 Ruling in the case of Sulkhan Gvelesiani v. Parliament of Georgia, 2019, <<https://constcourt.ge/ka/judicial-acts?legal=1794&scrollheight=2906.39990234375>> [16.08.2023]. (in Georgian).

registered in the Constitutional Court – Levan Alafishvili, a legal entity of the Parliament of Georgia and a public law, against the director of the “Unified National Accreditation Body – Accreditation Center”, in which the claimant challenges the constitutionality of the legal norm that provides the administrative body with the authority to establish rules of administrative proceedings different from legislative regulations. For instance, a specific rule – not to register the application of the interested person and not to start administrative proceedings if this application does not fully comply with the established requirements of the administrative body.<sup>24</sup> The court still has not decided to start considering the merits of this case however, its explanations will be significant.

### **3. European Standards of Good Administration**

#### **3.1. Principles of a Good Administration Defined by the Committee of Ministers of the Council of Europe**

Having regard to pan-European administrative law, since the 70s of the last century, the recommendations of the Committee of Ministers of the Council of Europe have had particular importance as they define a good administration that pertains to the soft law.<sup>25</sup> For years, the Council of Europe had not been interested in the cases of administrative law, and these types of disputes had not been considered even by the Strasbourg Court.<sup>26</sup> Only in 1971, in the case of *Ringeisen*, the court indicated that the right to a fair trial could cover a case even if the domestic legislation of the country considered it as an administrative dispute, but in conformity with the requirements of Article 6 of the European Convention, it fell into the category of criminal or civil cases.<sup>27</sup> In the following years, with the development of the practice of the Strasbourg Court, the Committee of Ministers of the Council of Europe created standard procedures for additional protection. In the 70s the council began working on the procedures that were based on the report of four European scientists (Prof. Leobenstein (Vienna), Christenson (Copenhagen), Fromont (Dijon), Vade (Oxford)).<sup>28</sup> They pointed out that while some international instruments protected criminal and civil rights, the similar was not practiced in the direction of administrative law. Professor Vade also proposed to adopt the Charter of Fair Administrative Procedures of the Council of Europe.

In 1971, the Committee of Ministers of the Council of Europe created a special sub-committee, which surveyed 17 member countries to study the main institutions of administrative law. Taking into

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<sup>23</sup> Constitutional lawsuit N1573, Levan Alafishvili, a legal entity of the Parliament of Georgia and public law against the director of the “Unified National Accreditation Body – Accreditation Center”, 2021, <<https://constcourt.ge/ka/judicial-acts?legal=10745&scrollheight=200>> [25.08.2023] (in Georgian)..

<sup>24</sup> Ibid.

<sup>25</sup> *Stelkens Ul., Andrijauskaitė Ag.*, Good Administration and the Council of Europe, Law, Principles, and Effectiveness, *Stelkens Ul., Andrijauskaitė Ag.*, (eds), First Edition, Oxford University Press, 2020, 100.

<sup>26</sup> *Leuprecht M.*, The Contribution of the Council of Europe to Reinforcing the Position of the Individual in Administrative Proceedings, Roundtable with European Ombudsmen, Strasbourg, 1985, 1-10.

<sup>27</sup> Ibid.

<sup>28</sup> *Leuprecht M.*, The Contribution of the Council of Europe to Reinforcing the Position of the Individual in Administrative Proceedings, Roundtable with European Ombudsmen, Strasbourg, 1985, 4-5.

account the opinions of the mentioned sub-committee, the Council of Europe developed many recommendations regarding various procedural issues.<sup>29</sup>

In 1977, the Committee of Ministers of the Council of Europe approved the text of a very important resolution and defined five main principles to be followed and taken into account during the implementation of public administration.<sup>30</sup> In particular, the right of an interested person to submit opinions during the administrative proceedings, study the material related to the case, have a representative, make a reasoned decision, and get properly explained about the right to appeal<sup>31</sup>, is the fundamental principle of modern administration.<sup>32</sup>

In subsequent years, the Ministerial Committee on Public Administration approved many other important recommendations. In 1980, the Council adopted Recommendation N (80) 2 concerning the Exercise of the Discretionary Powers.<sup>33</sup> Although the member states of the Council of Europe requested broader powers of administration, the document indicated that powers should not have been enforced in a biased manner or breached the scope of authority. Concerning discretionary authority, the recommendation included the following elements: a) the purpose for which this authority is granted; b) impartiality and objectivity; c) equality before the law; d) reasonableness and proportionality.<sup>34</sup>

In 1981, the Committee of Ministers approved a recommendation on ensuring access to information protected in public institutions. The Committee took into account all the main issues that modern regulation of access to public information requires.<sup>35</sup>

Recommendation Rec 2004 (20), which is related to the court control of administrative acts, is also important. It was adopted by the Committee of Ministers of the Council of Europe in 2004.<sup>36</sup>

Other recommendations approved by the Committee of Ministers establish important principles of public administration, which also protect human rights.<sup>37</sup> The Council of Europe approved the Code

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<sup>29</sup> Ibid, 1-10.

<sup>30</sup> Council of Europe, Committee of Ministers, Final Activity Report, Submitted to the Committee of Ministers, Strasbourg, 1977, 12-19, <<https://rm.coe.int/native/090000168051651e>> [17.08.2023].

<sup>31</sup> Resolution (77) 31, On the Protection of the Individual concerning the Acts of Administrative Authorities, Council of Europe, Committee of Ministers, 1977, <<https://rm.coe.int/09000016804dec56>> [15.10.2020].

<sup>32</sup> Gvaramadze T., Ombudsman Institute – as an alternative appeal mechanism in the field of public administration, *Journal of Law, Burduli Ir. (ed.)*, #2, 2020, 147, <<https://jlaw.tsu.ge/index.php/JLaw/issue/view/607/109>> [17.08.2023] (in Georgian).

<sup>33</sup> Recommendation No. R (80) 2, Concerning the Exercise of the Discretionary Powers By Administrative Authorities, Council of Europe, Committee of Ministers, 1980, <<https://rm.coe.int/cmrec-80-2-concerning-the-exercise-of-discretionary-powers-by-administ/1680a43b39>> [17.08.2023].

<sup>34</sup> Ibid.

<sup>35</sup> Recommendation No. R (81) 19, Concerning the Access to Information Held by Public Authorities, Council of Europe, Committee of Ministers, 1981. <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804f7a6e>> [17.08.2023].

<sup>36</sup> Recommendation No Rec (2004) 20, On Judicial Review of Administrative Acts, Council of Europe, Committee of Ministers, 2004, <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805db3f4#globalcontainer](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805db3f4#globalcontainer)> [25.08.2023].

<sup>37</sup> For example, Recommendation No R (97) 7, on Local Public Services and the Rights of their Users, Council of Europe, Committee of Ministers, 97, <<https://rm.coe.int/cmrec-97-7-on-local-public-services-and-rights-of-their-users/1680a43b65>> [17.08.2023]. Recommendation No. R (2000) 10, on Codes of

of Good administration, Rec (2007) 7.<sup>38</sup> The recommendation identifies the principles on which the activities of administrative bodies are based. In particular, the principles of lawfulness, equality, impartiality, and proportionality, as well as the principles of legal certainty and foreseeability. The recommendation defines the principle of making decisions within a reasonable period and enables private persons to participate in the adoption of administrative decisions. The recommendation in the administrative decision includes both individual decisions and normative acts. In addition, according to the recommendation, the decisions can be taken by public institutions or based on requests from individuals. Following the procedures, the recommendation also mentions the need to specify the rule in the act for appealing it, to forward the application to another institution, in case this act is not admissible to this body. If the administrative body intends to make a restrictive decision, the interested person should be allowed to present his opinions to the body independently or through a representative. The recommendation also involves justifying decisions and the rules to get them comprehended, assuring their effective implementation by the officials, and the possibility to annul them as well as appealing mechanisms, including a one-time submission.<sup>39</sup>

According to scholars, the recommendations of the Council of Europe are an important source for the Strasbourg Court, especially after the 2000s, when the court significantly relied on the recommendations of the Committee of Ministers to define the rights protected by the Convention and develop its practice.<sup>40</sup>

### **3.2. Strasbourg Case Law**

#### **3.2.1. Why is Case Law Important?**

The European Convention on Human Rights is a constitutional document for the Council of Europe that ensures membership of the Council after its ratification and implementation.<sup>41</sup> According to Professor Ulrich Stelkens, the line of court decisions points to the facts that national courts must apply and interpret the Convention.<sup>42</sup> In 2022 the Parliament of Georgia made amendments to the General Administrative Code of Georgia, which will promote implementing Strasbourg court

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Conduct for Public Officials, Council of Europe, Committee of Ministers, 2000, <<https://rm.coe.int/16805e2e52>> [17.08.2023]. Recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2014)7 on the protection of whistle-blowers < <https://rm.coe.int/16807096c7> > [17.08.2023].

<sup>38</sup> Recommendation CM/Rec(2007)7, on Good Administration, Council of Europe, Committee of Ministers, 2007, <<https://rm.coe.int/cmrec-2007-7-of-the-cm-to-ms-on-good-administration/16809f007c>> [17.08.2023].

<sup>39</sup> Recommendation CM/Rec(2007)7, on Good Administration, Council of Europe, Committee of Ministers, 2007, <<https://rm.coe.int/cmrec-2007-7-of-the-cm-to-ms-on-good-administration/16809f007c>> [17.08.2023].

<sup>40</sup> *Stelkens Ul., Andrijauskaitė Ag., Good Administration and the Council of Europe, Law, Principles, and Effectiveness, Stelkens Ul., Andrijauskaitė Ag., (eds), First Edition, Oxford University Press, 2020, 101-102.*

<sup>41</sup> *Ibid*, 124.

<sup>42</sup> *Ibid*, 125.

decisions at the national level. This is an additional chance to make national legislation and practice correlate with the best modern standards of human rights protection.<sup>43</sup>

Thus, to define fair administrative proceedings as a basic right, considering the implemented legislative changes, it is essential to review the practice of the Strasbourg Court, especially, since it is required in the process of making decisions by various administrative bodies.

### **3.2.2. How the Case-Law of the Court of Strasbourg Developed and What are the Modern Standards**

According to Professor Stelkens, the Strasbourg Court had resolved the disputes related to public administration for years but it had avoided recognizing good administration as a right in the Convention. Moreover, following the assessments of scientists, despite the procedural similarities, the right to a fair trial protected by Article 6 of the European Convention had included only procedural guarantees in the court, not administrative discussions.<sup>44</sup> For example, no specific reference had been made to taxation matters, which were normally not based on discretion but on the application of more or less precise legal rules.<sup>45</sup>

However, the situation significantly changed after the Grand Chamber of the Strasbourg Court issued its decision in 2000 in *Bayeller v. Italy*. Under researchers, the Strasbourg Court defined the requirements and principles for administrative bodies for the first time. In particular, decisions must be made within a reasonable timeframe considering appropriate procedures and consistent rules (established practice).<sup>46</sup>

In the case of *Moskal v. Poland*, the court used the term “a good administration” for the first time and pointed out that considering disputes related to public administration, administrative authorities should act in a reasonable time and consistently.<sup>47</sup>

According to Professor Stelkens, the principle of good administration is the framework which required to be used.<sup>48</sup>

In the following years, the court specified the same three principles in the decisions. The development of practice led to the emergence of new definitions which also created the standard of a good administration. For example, in the case of *Bērziņš and Others v. Latvia*,<sup>49</sup> it is indicated that the Convention primarily protects practical and effective rights which is reflected in the assessment of

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<sup>43</sup> Explanatory card on the draft bill of Georgia “On Amendments to the General Administrative Code of Georgia”, <<https://info.parliament.ge/file/1/BillReviewContent/304307>> [16.04.2023] (in Georgian).

<sup>44</sup> *Stelkens Ul., Andrijauskaitė Ag.*, Good Administration and the Council of Europe, Law, Principles, and Effectiveness, *Stelkens Ul., Andrijauskaitė Ag.*, (eds), First Edition, Oxford University Press, 2020, 126.

<sup>45</sup> *Fortsakis Th. P.*, The Role of Individual Rights in the Europeanization of Tax Law, Book Title: Human Rights and Taxation in Europe and the World, *Kofter/Poiarés Maduro/Pistone (eds.)*, Amsterdam, 2011, 96.

<sup>46</sup> *Stelkens Ul., Andrijauskaitė Ag.*, Good Administration and the Council of Europe, Law, Principles, and Effectiveness, *Stelkens Ul., Andrijauskaitė Ag.*, (eds), First Edition, Oxford University Press, 2020, 126.

<sup>47</sup> *Moskal v. Poland*, (Application no. 10373/05), [2010], ECHR, <<https://hudoc.echr.coe.int/GEO?i=001-94009>> [20.08.2023].

<sup>48</sup> *Stelkens Ul., Andrijauskaitė Ag.*, Good Administration and the Council of Europe, Law, Principles, and Effectiveness, *Stelkens Ul., Andrijauskaitė Ag. (eds)*, First Edition, Oxford University Press, 2020, 126.

<sup>49</sup> *Berzins and Others v. Latvia*, (Application no. 73105/12), [2021], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-212012>> [18.08.2023].



circumstances beyond the case of the national court, including not only the proportionality of compensation concerning the property, but also the actions, processes, and means applied by administrative authorities. In this context, the court emphasizes the legal predictability of administrative bodies, regardless of whether it derives from normative regulation or practice. The Strasbourg Court also points out that referring to the public interest, administrative authorities must act within a reasonable time ensuing a set of relevant rules, consistent with a good administration.<sup>50</sup>

Before this case, the Grand Bench of the Strasbourg Court had made the same interpretation of the case of *Broniowski v. Poland* (2004).<sup>51</sup> Regarding the public interest in this case the Strasbourg Court points out that the discretion of the administrative bodies is quite broad which is caused by political, economic or social factors. The conventional control over this case is revealed in the assessment of reasoning and argumentation of decisions.<sup>52</sup>

In the case of *Bērziņš and Others v. Latvia*,<sup>53</sup> the Strasbourg Court also notes that the requirement to keep the balance between private and public interests is not met if a disproportionate and excessive burden is put on a private person.<sup>54</sup> However, it also mentions that like other cases related to the branches of public administration, the public interest in environmental management issues is particularly high and the state is provided with more freedom of action and wider discretion than in cases where only civil rights are involved.<sup>55</sup> The court also indicates if the applicant was informed about the established restrictions, regulations, or rules of ownership, the scope of the resulting trust, and the possibilities of appeal.<sup>56</sup> Regarding this case, the main argument for the court to determine the violation of the property right was the failure of administrative bodies for about ten years to meet the legal obligations within their discretion to resolve the issue in a timely and efficient manner.<sup>57</sup>

In the case of *Čakarević v. Croatia*, the Strasbourg Court defines another element of a good administration and focuses on a case when a person has legitimate expectations of an unlawful decision made by administrative authorities in error, and subsequently, the burden of the error, including the financial burden, is transferred to the interested party. The court perceives that as a disproportionate interference with the right.<sup>58</sup> The Strasbourg Court develops an approach to a good administration protecting the principle of legal clarity, which in turn, is one of the fundamental aspects

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<sup>50</sup> *Berzins and Others v. Latvia*, (Application no. 73105/12), [2021], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-212012>> [18.08.2023].

<sup>51</sup> *Broniowski v. Poland* (Application no. 31443/96), [2004], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-61828>> [19.09.2023].

<sup>52</sup> *Ibid.*

<sup>53</sup> *Berzins and Others v. Latvia*, (Application no. 73105/12), [2021], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-212012>> [18.08.2023].

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Čakarević v. Croatia* (Application no. 48921/13), [2018], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-182445>> [19.08.2023].

of the rule of law.<sup>59</sup> The court believes that administrative authorities should take appropriate measures not to impose a disproportionate burden on an interested party.<sup>60</sup>

Concerning the case *Rysovsky v. Ukraine*, the Strasbourg Court regards the principle of good administration as the obligation of administrative bodies to specify clear and transparent procedures that make their activities predictable. Also, they reduce errors and contribute to the legal validity of civil transactions that affect real property interests.<sup>61</sup> The same case features the principle that does not exclude the correction of mistakes made by administrative bodies but it must not lead to a disproportionate interference with the right, and administrative bodies should not be allowed to benefit from their mistakes or avoid responsibilities. The Court of Strasbourg indicates in other cases that administrative bodies must not be able to invalidate the property-related act which arises the necessity of applying for adequate reimbursement to the interested parties or compensating for damages in another form.<sup>62</sup> In the same case, the Strasbourg court regards the invalidity of the enabling act as complex from the moment of starting its adoption when the legislation does not provide sufficient warrants against abusing the rights of public officials. Also, when the official is given such authority without specific basics at any time and the participation of the person affected by this act. Also, the court considers that limitless time for the official authority to review his decisions, including after discovering an error, significantly undermines the basis of legal certainty.<sup>63</sup>

The case *Rysovsky v. Ukraine* is distinguished by expressing disapproval of the court with the inconsistent, uncoordinated, and contradictory actions and decisions of public officials. The court decision assesses: “The incoherent and uncoordinated manner in which the authorities treated the applicant’s situation created a continuous ambiguity for his entitlement to the plot of land, lasting since 1992, which is nearly twenty years...”<sup>64</sup> However, in the Court’s view, irrespective of any financial repercussions, the frustration that could naturally result from such a prolonged ambiguous situation constitutes in itself a disproportionate burden, which has been further aggravated by the absence of any reparation for the applicant’s perpetual inability to take up his formal entitlement to the plot of land.<sup>65</sup>

In the case of *Bejnarović and Others v. Lietuva*, as in the previous case, the Court appraised the conflict between two important principles of administrative law, trust, and legality, and pointed out that good administration includes the interest in correcting errors and illegal decisions by

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<sup>59</sup> *Nejdet Şahin adn Perihan Şahin v. Turkey* (Application no.13279/05), [2011], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-114761>> [25.08.2023].

<sup>60</sup> *Zolotas v. Greece*, (Application no. 66610/09), [2013], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-116441>> *Romeva v. North Macedonia* (Application no. 32141/10), [2020], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-198885>> [25.08.2023].

<sup>61</sup> *Rysovskyy v. Ukraine*, (Application no. 29979/04), [2012], ECHR, <<https://hudoc.echr.coe.int/GEO?i=001-107088>> [20.08.2023].

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Rysovskyy v. Ukraine*, (Application no. 29979/04), [2012], ECHR, <<https://hudoc.echr.coe.int/GEO?i=001-107088>> [20.08.2023].

<sup>65</sup> *Ibid.*

administrative bodies, however, correcting illegality should not be made at the expense of bona fide stakeholders, by imposing liability on them.<sup>66</sup>

The same interpretation was made by the Strasbourg Court in the case of *Ibrahimbeyov and others v. Azerbaijan*, indicating that good administration requires not suffering individuals from the burden of correcting the mistakes of administrative bodies. Good administration includes the availability of compensation for damages to the parties with bona fide interests.<sup>67</sup> The court has made a similar interpretation concerning many other cases.<sup>68</sup>

The Court also considered the issue of legitimate trust to administrative bodies in the case of *Lelas v. Croatia*, in which it is explained that the interested party acting in good faith has an expectation of the legal actions and decisions of public officials when officials follow the established rules and requirements. Obviously, except for those exceptional cases when the person knew or should have known that the officials did not have the authority to make such decisions. An interested party ought not to verify whether officials are conducting internal rules that are not publicly available. The interested parties should not suffer from the burden of non-compliance with established rules by Strasbourg Directive.<sup>69</sup>

The principles of a good administration have been mentioned by the Strasbourg Court in most cases related to the realization of property rights, but not only. For example, the *Dadouchi v Malta* refers to the recognition and registration of the marriage concluded abroad, in Malta. According to Article 8 of the Convention, the Strasbourg Court regards the actions of administrative bodies as interference with the right protected by the Convention on the following grounds: when the established requirements are not clear, understandable, and predictable to perform, administrative bodies act arbitrarily. The court castigated the body for not having checked the data citizenship and redirected the interested party to another agency, which in turn, refused to provide the information.<sup>70</sup>

The Court considered the case of *Lombardi Valauri v. Italy* in the context of freedom of expression. It decided that the dismissal of the employee from the occupied job position based on the Faculty Board's decision which following administrative rules regarded the view of the lecturer in clear opposition to their Catholic teaching, without hearing him and examining circumstances, was a violation of right protected by the European Convention.<sup>71</sup>

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<sup>66</sup> *Beinarovic and Others v. Lithuania*, (Applications nos. 70520/10, 21920/10 and 41876/11), [2018], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-183540>> [19.08.2023].

<sup>67</sup> *Ibrahimbeyov and Others v. Azerbaijan*, (Application no. 32380/13), [2023], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-223021>> [25.08.2023].

<sup>68</sup> *Tumeliai v. Lithuania*, (Application no. 25545/14), [2018], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-179885>> *Paleviciute and Dzidzeviciene v. Lithuania*, (Application no. 32997/14), [2018], <https://hudoc.echr.coe.int/eng?i=001-179825>> [25.08.2023].

<sup>69</sup> *Lelas v. Croatia*, (Application no. 55555/08 [2010], ECHR, <<https://hudoc.echr.coe.int/eng?i=001-98827>> [25.08.2023].

<sup>70</sup> *Case of Dadouch v. Malta*, (Application no. 38816/07), [2010], ECHR, <<https://hudoc.echr.coe.int/GEO?i=001-99883>> [25.08.2023].

<sup>71</sup> *Lombardi Vallauri v. Italy*, (Application no. 39128/05), [2010], ECHR, <<https://hudoc.echr.coe.int/GEO?i=001-95150>> [23.08.2023].

#### **4. Conclusion**

The constitutional amendments of 2017 ensured the constitutional recognition of fair administrative procedures as a basic human right. The presented research reviewed the important international standards for defining the right that is guaranteed by the Constitution of Georgia.

The establishment of constitutional rights is not a one-off process, and defining the right to fair administrative procedures will continue alongside the development of the practice of national and international courts. However, such discussion can contribute to the protection of human rights in the process of implementing public administration as well as make the need for further research more apparent in academic circles.

Taking into account the decisions of the Strasbourg Court discussed in the article and the standards established by the Council of Europe, it is possible to highlight several issues concerning the right to a good administration or fair administrative proceedings. In particular:

- Administrative procedures should be written clearly and unambiguously to reduce the number of mistakes made by officials as well as interested parties can understand the rules properly;
- In the process of public administration, decisions should be made within a reasonable period, the period should not be artificially extended and make interested parties confused for a long time;
- Decisions must be made after properly examining circumstances and facts, substantiated and supported with legal arguments;
- Interested parties must be allowed to present their opinions, positions, and pieces of evidence; such guarantees should be feasible;
- The relevant balance should be ensured between private and public interests;
- Administrative bodies should not make people in good faith take responsibility for the negative consequences of their own mistakes and illegal actions when they have completely legitimate expectations.

The article does not review all the decisions of the Strasbourg Court or all the recommendations approved by the Council of Europe, however, this short list is enough to make clear the fair administrative proceedings and how important it is to understand and consider these issues to implement effective public administration following the best standards in Georgia.

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