

Nóra Balogh-Békesi – Kitti Pollák

GENERAL PRINCIPLES OF ADMINISTRATIVE PROCEDURE IN THE EUROPEAN UNION, IN HUNGARY AND IN FRANCE

Dr. Nóra Balogh-Békesi PhD, Associate Professor, Lajos Lőrincz Institute of Administrative Law of the National University of Public Service, balogh.bekesi.nora@uni-nke.hu

Dr. Kitti Pollák, Assistant Lecturer, Lajos Lőrincz Institute of Administrative Law of the National University of Public Service, pollak.kitti@uni-nke.hu

1. INTRODUCTION¹

First of all, we need to highlight the general characteristics of the principles of administrative procedure. The formation of the principles of administrative procedure is a result of a long process, which is closely linked to administrative justice. The development of the principles of administrative procedure is based on practical experiences and on the needs raised by time. The determination of the principles of administrative procedure is still an ongoing phenomenon.² After World War II in Europe, the modern constitutionality has consolidated and further strengthened the principles of procedural laws (within the administrative procedure law) by the declarations of human rights and the foundation of the Constitutional Courts. The international human rights documents, including the Charter of Fundamental Rights of the European Union as well as the national Constitutions state – between the fundamental rights – several procedural rights for the good functioning of public authorities.³ These procedural rights appear in Administrative Procedure Acts as principles.⁴ Consequently, the principles of administrative procedure ensure a link between Constitution and the detailed Administrative Procedure Acts in cases of the States, and in case of the European Union the principles link the primary EU legislation (Treaty on the European Union [hereinafter referred to as TEU], Treaty on the Functioning of the European Union [hereinafter referred to as TFEU], Charter of Fundamental Rights of the European Union) and the secondary legislation (regulations and directives). Therefore, the principles strengthen constitutionality in the procedures. The principles are general rules, which need to be applied during the whole procedure together with the specific procedural rules. The judicial practice plays an important role in the definition of the content of each principle of administrative procedure.

Another important question has been raised regarding the regulation of the principles of administrative procedure. Primarily, the legislators need to decide whether or not to codify *expressis verbis* principles in the Administrative Procedure Act. Those, who are against of the codification of the principles in Procedural Codes, argue that the principles should be reflected in the text of the Procedural Codes. Therefore, there would be no need to refer to principles in the Administrative Procedure Acts, because these procedural principles can be found in the Constitution or derived from the Constitution. Those who are in favour of the explicit declaration of the principles in the Procedural Codes highlight the fact that principles have a gap filler role and a cohesive force. They also remark that as it is not

¹ We would like to note that where there was no official translations of the law, the authors translated the text of the law themselves.

² For the expanding range of principles see for example in the Hungarian Administrative Procedure Act (Act CXL. of 2004) the principle of enhanced protection for minors, or from the area of EU procedural law the right of access to information.

³ See for example: The right to good administration in the Charter of Fundamental Rights of the European Union, the right to a fair administration in the Fundamental Law of Hungary.

⁴ BALOGH-BÉKESI Nóra (2017): *Alapelvek a Modell Szabályok I. Könyvének általános rendelkezéseiben. Pro Publico Bono – Magyar Közigazgatás*, 2017/2. különszám, 27.

possible to define precisely all procedural rules in the Procedural Codes, the principles help to solve the non-regulated questions during the application of law. Moreover, the rules codified in the Procedural Codes need to be applied in accordance with the principles.⁵

In this context, a further question arises: if the principles of administrative procedure are mentioned in the Administrative Procedure Acts, should they only be listed in the Preamble of Administrative Procedure Acts without an explanation or should they be found in the text of the Administrative Procedure Act with an explanation? The direct applicability of the principles of administrative procedure is also a current important issue.

We seek answers to these questions on the basis of the draft regulations of the EU and of the new Hungarian and French Administrative Procedure Acts.

2. THE DRAFT REGULATIONS OF THE EUROPEAN UNION REGARDING THE GENERAL PRINCIPLES OF ADMINISTRATIVE PROCEDURE

The regulation of the EU administrative procedures has been on the EU's agenda for several years, but it has not yet been drafted. The codification of this regulation has already been urged twice by resolutions of the European Parliament. In these resolutions the European Parliament asked the European Commission to propose a regulation regarding EU administrative procedures. The first resolution of the European Parliament dates back to 2013.⁶

In the Annex of this resolution, the European Parliament defines some recommendations on the content of the regulation. The second resolution was accepted three and a half years later, in 2016.⁷ In this resolution: “the European Parliament recalls that in its resolution of 15 January 2013, Parliament called pursuant to Article 225 of the Treaty on the Functioning of the European Union for the adoption of a regulation on an open, efficient and independent European Union administration under Article 298 TFEU, but despite the fact that the resolution was adopted by an overwhelming majority, Parliament's request was not followed up by a Commission proposal therefore invites the Commission to consider the annexed proposal for a regulation. In addition, Parliament calls on the Commission to come forward with a legislative proposal to be included in its work programme for the year 2017”. Ergo the European Parliament emphasised its legislative demands in an unusual way by elaborating a proposal for the regulation. The third document which needs to be considered in the examination of the codification of EU administrative procedure rules is the proposal elaborated in 2014 by a group of researchers (the ReNEUAL). The proposal

⁵ See the principles of Administrative Justice in comparative analysis: ROZSNYAI Krisztina (2013): A hatékony jogvédelem biztosítása a közigazgatási bírászkodásban. *Acta Humana Emberi Jogi Közlemények*, 2013/1. 117–130.

⁶ The European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024 [INL]) was adopted by an overwhelming majority: 572 in favour, 16 against, 12 abstentions.

⁷ European Parliament resolution of 9 June 2016 for an open, efficient and independent European Union administration 2016/2610(RSP).

is called the Draft Model Rules on EU Administrative Procedure (hereinafter referred to as: Model Rules). This Model Rules is a proposal for a regulation with a legal text and explanation. ReNEUAL members concluded that Model Rules for EU law of administrative procedure are best designed following a process of ‘innovative codification’. ‘Innovative codification’ occurs when a new law establishes one source of existing principles which are usually scattered across different laws and regulations and in the case-law of courts; it may also modify these existing principles and rules, if needed, as well as add new ones. This method allows contradictions in existing laws to be resolved and gaps to be filled.⁸ The Model Rules are presented in a form of their possible adoption as an EU Regulation.⁹ The text of the Model Rules is more than three hundred pages and the structure of the Model Rules is divided into six books: Book I General Provisions, Book II Administrative Rulemaking, Book III Single Case Decision-Making, Book IV Contracts, Books V Mutual assistance and Book VI Administrative Information. Books II, III and IV are drafted for the EU institutions, bodies, offices and agencies, whereas Books V and Book VI have been drafted for EU authorities and Member States’ authorities.¹⁰

These three documents presented above are closely interrelated. The European Parliament resolution of 15 January 2013 states the reasons of the codification of EU Administrative Procedure rules, which are referred to in the Model Rules and in the European Parliament resolution of 9 June 2016. The European Parliament resolution of 9 June 2016 states rules determined mostly in Book I and III of the Model Rules.

Before presenting the principles mentioned in these three documents, we should also refer to the rights and principles of the Charter of Fundamental Rights of the European Union, which have close contact to the principles of administrative procedure. The Charter of Fundamental Rights of the European Union regulates the principle of equality before the law and the principle of non-discrimination.¹¹ The procedural rights can be found in the Chapter V Citizens’ rights of the Charter of Fundamental Rights of the European Union. The right to good administration is determined in the Charter of Fundamental Rights of the European Union as follows:

- “1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - a) the right of every person to be heard, before any individual measure is taken which would affect him or her adversely;

⁸ Introduction/Book I – General Provisions ReNEUAL SC 2014 (17).

⁹ Introduction/Book I – General Provisions ReNEUAL SC 2014 (18).

¹⁰ See in more detail ReNEUAL Model Rules on EU Administrative Procedure, 21–24. Available at: http://renewal.eu/publications/ReNEUAL%20Model%20Rules%202014/ReNEUAL-%20Model%20Rules-Compilation%20Books%20I_VI_2014-09-03.pdf (Downloaded: 10.10.2017.)

¹¹ See The Charter of Fundamental Rights of the European Union, Articles 20–21. Available at: www.europarl.europa.eu/charter/pdf/text_en.pdf (Downloaded: 10.10.2017.)

- b) 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;
 - c) the obligation of the administration to give reasons for its decisions.
3. 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.
 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.”

The right of access to documents is also a principle declared in Article 42 of the Charter of Fundamental Rights of the European Union as follows: “Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.”

It should be highlighted that the future secondary source on EU administrative procedures should guarantee the realisation of the principle of good administration.¹² In this context, it shall be also noted that Article 47 of the Charter of Fundamental Rights defines the right to an effective remedy and to a fair trial as follows: “Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.” The right to legal remedy is one of the most important procedural rights, which means that everyone whose rights have been violated has the possibility to seek legal remedy from another body (tribunal) or higher authority. Nevertheless, the right to an effective remedy before a tribunal is not an unlimited right: several conditions can be defined by the law.¹³ After briefly listing the procedural rights mentioned in the Charter of Fundamental Rights, we should also refer to one of the fundamental values of the EU, the rule of law, which should be always taken into account while the codification of EU administrative procedure rules.¹⁴

Lastly, we should mention the legal basis of the codification of EU administrative procedure rules. Article 298 on the TFUE declares that: “1. In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration.”¹⁵ This Article of the TFEU provides the legal basis for the regulation for the general rules of EU administrative procedures.

¹² See VÁCZI Péter (2013): *A jó közigazgatási eljáráshoz való alapjog és annak összetevői*. Budapest–Pécs, Dialóg Campus.

¹³ See POLLÁK Kitti (2015): Directions for the Regulation of Legal Remedies in the Light of Model Rules on EU Administrative Procedure. In GERENCSÉR Balázs – BERKES Lilla – VARGA Zs. András eds.: *Current Issues of the National and EU Administrative Procedures*. Budapest, Pázmány Press. 409–419.

¹⁴ Article 2 of the TEU.

¹⁵ Treaty on the Functioning of the European Union. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN> (Downloaded: 10.10.2017.)

We need to note that so far, no regulation has been enacted that cites Article 298 TFEU as a legal basis.¹⁶

The following parts of the paper present the principles of administrative procedure mentioned in the European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union, in the Model Rules and in the European Parliament Resolution of 9 June 2016 for an open, efficient and independent European Union administration.

2.1. European Parliament Resolution of 15 January 2013 with Recommendations to the Commission on a Law of Administrative Procedure of the European Union

In the resolution of 15 January 2013 on a Law of Administrative Procedure of the European Union, the European Parliament requested the Commission to submit a proposal for a regulation on the European Law of Administrative Procedure. In the Annex of this resolution we can find detailed recommendations of the content of this proposal.¹⁷ Among the six Recommendations of the Annex, the third Recommendation lays down general principles which should govern administration and which should be codified in the regulation.¹⁸ These principles are: the principle of lawfulness, the principle of non-discrimination and equal treatment, the principle of proportionality, the principle of impartiality, the principle of consistency and legitimate expectations, the principle of respect for privacy, the principle of fairness, the principle of transparency, the principle of efficiency and service. The Recommendation 3 on the general principles which should govern the administration defines these principles as follows:

“Principle of lawfulness: the Union’s administration shall act in accordance with the law and apply the rules and procedures laid down in the Union’s legislation. Administrative powers shall be based on, and their content shall comply with, the law.

Decisions taken or measures adopted shall never be arbitrary or driven by purposes which are not based on the law or motivated by the public interest.

Principle of non-discrimination and equal treatment: the Union’s administration shall avoid any unjustified discrimination between persons based on nationality, gender, race,

¹⁶ Remarks by the Secretary-General of the European Ombudsman, Mr. Ian Harden, at a hearing of the Committee on Legal Affairs of the European Parliament. Available at: <https://polcms.secure.europarl.europa.eu/cmsdata/upload/51d3efc7-cbdd-4a80-8cef-2042496c5ad9/Harden%20speech.pdf> (Downloaded: 10.10.2017.); and HARLOW, Carol – RAWLINGS, Richard (2014): *Process and Procedure in EU Administration*. United Kingdom, Hart Publishing. 332.

¹⁷ (2012/2024 [INL]) www.europarl.europa.eu; Recommendation 1 (on the objective and scope of the regulation to be adopted), Recommendation 2 (on the relationship between the regulation and sectoral instruments), Recommendation 3 (on the general principles which should govern the administration), Recommendation 4 (on the rules governing administrative decisions), Recommendation 5 (on the review and correction of own decisions), Recommendation 6 (on the form and publicity to be given to the regulation).

¹⁸ We should note that Recommendation 4 on the rules governing administrative decisions defines precise procedural rules, which are also related to the general principles of administrative procedures.

colour, ethnic or social origin, language, religion or beliefs, political or any other opinion, disability, age, or sexual orientation.

Persons who are in a similar situation shall be treated in the same manner. Differences in treatment shall only be justified by objective characteristics of the matter in question.

Principle of proportionality: the Union's administration shall take decisions affecting the rights and interests of persons only when necessary and to the extent required to achieve the aim pursued.

When taking decisions, officials shall ensure a fair balance between the interests of private persons and the general interest. In particular, they shall not impose administrative or economic burdens which are excessive in relation to the expected benefit.

Principle of impartiality: the Union's administration shall be impartial and independent. It shall abstain from any arbitrary action adversely affecting persons, and from any preferential treatment on any grounds.

The Union's administration shall always act in the Union's interest and for the public good. No action shall be guided by any personal (including financial), family or national interest or by political pressure. The Union's administration shall guarantee a fair balance between different types of citizens' interests (business, consumers and other).

Principle of consistency and legitimate expectations: the Union's administration shall be consistent in its own behaviour and shall follow its normal administrative practice, which shall be made public. In the event that there are legitimate grounds for departing from such normal administrative practice in individual cases, a valid statement of reasons should be given for such departure.

Legitimate and reasonable expectations that persons might have in the light of the way in which the Union's administration has acted in the past shall be respected.

Principle of respect for privacy: the Union's administration shall respect the privacy of persons in accordance with Regulation (EC) No. 45/2001.

The Union's administration shall refrain from processing personal data for non-legitimate purposes or transmitting such data to unauthorised third parties.

Principle of fairness: this must be respected as a basic legal principle indispensable in creating a climate of confidence and predictability in relations between individuals and the administration.

Principle of transparency: the Union's administration shall be open. It shall document the administrative procedures and keep adequate records of incoming and outgoing mail, documents received and the decisions and measures taken. All contributions from advisory bodies and interested parties should be made available in the public domain.

Requests for access to documents shall be dealt with in accordance with the general principles and limits laid down in Regulation (EC) No. 1049/2001.

Principle of efficiency and service: actions on the part of the Union's administration shall be governed by the criteria of efficiency and public service.

Members of the staff shall advise the public on the way in which a matter which comes within their remit is to be pursued.

Upon receiving a request in a matter for which they are not responsible, they shall direct the person making the request to the competent service.”

According to the European Parliament resolution of 15 January 2013 these nine principles need to be codified. Two of these nine principles (the principle of respect for privacy and the principle of consistency and legitimate expectations) are not cited in the Model Rules. It is also important to note that the content of the Recommendations 4, 5 and 6 of the European Parliament resolution of 15 January 2013 identically appears in the European Parliament resolution of 9 June 2016.

2.2. Principles in the Preamble of the Model Rules

In the Preamble of the Model Rules the basic principles of the EU administrative procedure law are defined. It states that: “Public authorities are bound in administrative procedures by the rule of law, the right to good administration and other related principles of EU administrative law.

In the interpretation and development of these model rules, regard should be had especially to equal treatment and non-discrimination, legal certainty, fairness, objectivity and impartiality, participation, proportionality, protection of legitimate expectations, transparency, and due access to effective remedies.

Public authorities shall have regard to efficiency, effectiveness and service orientation.

Within European administrative procedures due respect must be given to the principles of subsidiarity, sincere cooperation, and clear allocation of responsibilities.”

According to the explanation¹⁹ of the Preamble of the Model Rules, the rules on EU administrative procedures must be based on constitutional principles. These rules are already expressed in EU treaties; therefore the Model Rules do not intend to duplicate these provisions. The Preamble of the Model Rules only shortly refers to the principles, just to remind the addressees of the constitutional background.

Firstly, in the Preamble of the Model Rules two principles are named: the principle of the rule of law and of the principle of good administration. These two principles and other related principles of EU administrative law should be respected by the public authorities in administrative procedures. These are the fundamental standards of administrative procedural law. Subsequently, in Paragraph 2 we can find a list of principles, mainly in the same order like in the European Parliament resolution of 15 January 2013. The Preamble of the Model Rules refers especially to the rights of equal treatment and non-discrimination, legal certainty, fairness, objectivity and impartiality, participation, proportionality, protection of legitimate expectations, transparency, and access to effective remedies. Paragraph 3 of the Preamble of the Model Rules lists principles which are additional important guidelines for administrative action. The last paragraph of the Preamble of the Model Rules mentions

¹⁹ See www.reneual.eu/images/Home/ReNEUAL-Model_Rules-Compilation_BooksI_VI_2014-09-03.pdf (Downloaded: 10.10.2017.)

some principles such as the principle of subsidiarity, sincere cooperation, and clear allocation of responsibilities, which should be respected in all European administrative procedures. These principles are particularly important in composite procedures.

We can summarise that the Preamble of the Model Rules provides a list of principles, which shall direct the proper functioning and the good administration conduct of EU institutions. Also the principles named in the Preamble of the Model Rules help to correctly interpret the rules of the Books II–IV of the Model Rules. The Preamble of the Model Rules refers to principles which should guide all EU administrative procedures and which are applicable through the following Books of the Model Rules. The principles stated in the Preamble of the Model Rules could be complemented and clarified in other Books of the Model Rules.²⁰ According to Anita Boros, the regulation of the principles in the Model Rules is far from sufficient. She suggests that the principles of EU administrative procedures should appear not only in the Preamble, but also as part of the regulation, as a legally binding norm.²¹

2.3. European Parliament Resolution of 9 June 2016 for an Open, Efficient and Independent European Union Administration 2016/2610 (Rsp)

The Preamble of the European Parliament resolution of 9 June 2016 for an open, efficient and independent European Union administration 2016/2610 (RSP) specifies in twenty six paragraphs the application of principles of EU administrative procedure law and the right of good administration. The principles in the Preamble of this resolution seem like a justification of the further regulation. The principles defined in the Preamble of the European Parliament resolution of 9 June 2016 for an open, efficient and independent European Union administration are the following:

- “18) The principle of the rule of law, as recalled in Article 2 of the Treaty on European Union (TEU), is the heart and soul of the Union’s values. In accordance with that principle, any action of the Union has to be based on the Treaties in compliance with the principle of conferral. Furthermore, the principle of legality, as a corollary to the rule of law, requires that activities of the Union’s administration are carried out in full accordance with the law.
- 19) Any legal act of Union law has to comply with the principle of proportionality. This requires all measure of the Union’s administration to be appropriate and necessary for meeting the objectives legitimately pursued by the measure in question: if there is a choice among several potentially appropriate measures, the least burdensome option has to be taken and any charges imposed by the administration should not be disproportionate to the aims pursued.

²⁰ For example in Book III of the Model Rules: General Duty of fair decision-making and impartiality.

²¹ BOROS Anita (2017): Modell Szabályok az I. Könyvben. *Pro Publico Bono – Magyar Közigazgatás*, 2017/2. különszám, 49.

- 20) The right to good administration requires that administrative acts be taken by the Union's administration pursuant to administrative procedures which guarantee impartiality, fairness and timeliness.
- 21) The right to good administration requires that any decision to initiate an administrative procedure be notified to the parties and provide the necessary information enabling them to exercise their rights during the administrative procedure. In duly justified and exceptional cases where the public interest so requires, the Union's administration may delay or omit the notification.
- 22) When the administrative procedure is initiated upon application by a party, the right to good administration imposes a duty on the Union's administration to acknowledge receipt of the application in writing. The acknowledgment of receipt should indicate the necessary information enabling the party to exercise his or her rights of defence during the administrative procedure. However, the Union's administration should be entitled to reject pointless or abusive applications as they might jeopardize administrative efficiency.
- 23) For the purposes of legal certainty an administrative procedure should be initiated within a reasonable time after the event has occurred. Therefore, this Regulation should include provisions on a period of limitation.
- 24) The right to good administration requires that the Union's administration exercise a duty of care, which obliges the administration to establish and review in a careful and impartial manner all the relevant factual and legal elements of a case taking into account all pertinent interests, at every stage of the procedure. To that end, the Union's administration should be empowered to hear the evidence of parties, witnesses and experts, request documents and records and carry out visits or inspections. When choosing experts, the Union's administration should ensure that they are technically competent and not affected by a conflict of interest.
- 25) During the investigation carried out by the Union's administration the parties should have a duty to cooperate by assisting the administration in ascertaining the facts and circumstances of the case. When requesting the parties to cooperate, the Union's administration should give them a reasonable time-limit to reply and should remind them of the right against self-incrimination where the administrative procedure may lead to a penalty.
- 26) The right to be treated impartially by the Union's administration is a corollary of the fundamental right to good administration and implies staff members' duty to abstain from taking part in an administrative procedure where they have, directly or indirectly, a personal interest, including, in particular, any family or financial interest, such as to impair their impartiality.
- 27) The right to good administration might require that, under certain circumstances inspections be carried out by the administration, where this is necessary to fulfil a duty or achieve an objective under Union law. Those inspections should respect certain conditions and procedures in order to safeguard the rights of the parties.

- 28) The right to be heard should be complied with in all proceedings initiated against a person which are liable to conclude in a measure adversely affecting that person. It should not be excluded or restricted by any legislative measure. The right to be heard requires that the person concerned receive an exact and complete statement of the claims or objections raised and is given the opportunity to submit comments on the truth and relevance of the facts and on the documents used.
- 29) The right to good administration includes the right of a party to the administrative procedure to have access to its own file, which is also an essential requirement in order to enjoy the right to be heard. When the protection of the legitimate interests of confidentiality and of professional and business secrecy does not allow full access to a file, the party should at least be provided with an adequate summary of the content of the file. With a view to facilitating access to one's files and thus ensuring transparent information management, the Union's administration should keep records of its incoming and outgoing mail, of the documents it receives and measures it takes, and establish an index of the recorded files.
- 30) The Union's administration should adopt administrative acts within a reasonable time-limit. Slow administration is bad administration. Any delay in adopting an administrative act should be justified and the party to the administrative procedure should be duly informed thereof and provided with an estimate of the expected date of the adoption of the administrative act.
- 31) The right to good administration imposes a duty on the Union's administration to state clearly the reasons on which its administrative acts are based. The statement of reasons should indicate the legal basis of the act, the general situation which led to its adoption and the general objectives which it intends to achieve. It should disclose clearly and unequivocally the reasoning of the competent authority which adopted the act in such a way as to enable the parties concerned to decide if they wish to defend their rights by an application for judicial review.
- 32) In accordance with the right to an effective remedy, neither the Union nor the Member States can render virtually impossible or excessively difficult the exercise of rights conferred by Union law. Instead, they are obliged to guarantee real and effective judicial protection and are barred from applying any rule or procedure which might prevent, even temporarily, Union law from having full force and effect.
- 33) In order to facilitate the exercise of the right to an effective remedy, the Union's administration should indicate in its administrative acts the remedies that are available to the parties whose rights and interests are affected by those acts. In addition to the possibility of bringing judicial proceedings or lodging a complaint with the European Ombudsman, the party should be granted the right to request an administrative review and should be provided with information about the procedure and the time-limit for submitting such a request.
- 34) The request for administrative review does not prejudice the party's right to a judicial remedy. For the purpose of the time-limit for an application for judicial review, an administrative act is to be considered final if the party does not submit a request

for administrative review within the relevant time-limit or, if the party submits a request for administrative review, the final administrative act is the act which concludes that administrative review.

- 35) In accordance with the principles of transparency and legal certainty, parties to an administrative procedure should be able to clearly understand their rights and duties that derive from an administrative act addressed to them. For these purposes, the Union's administration should ensure that its administrative acts are drafted in a clear, simple and understandable language and take effect upon notification to the parties. When carrying out that obligation it is necessary for the Union's administration to make proper use of information and communication technologies and to adapt to their development.
- 36) For the purposes of transparency and administrative efficiency, the Union's administration should ensure that clerical, arithmetic or similar errors in its administrative acts are corrected by the competent authority.
- 37) The principle of legality, as a corollary to the rule of law, imposes a duty on the Union's administration to rectify or withdraw unlawful administrative acts. However, considering that any rectification or withdrawal of an administrative act may conflict with the protection of legitimate expectations and the principle of legal certainty, the Union's administration should carefully and impartially assess the effects of the rectification or withdrawal on other parties and include the conclusions of such an assessment in the reasons of the rectifying or withdrawing act.
- 38) Citizens of the Union have the right to write to the Union's institutions, bodies, offices and agencies in one of the languages of the Treaties and to have an answer in the same language. The Union's administration should respect the language rights of the parties by ensuring that the administrative procedure is carried out in one of the languages of the Treaties chosen by the party. In the case of an administrative procedure initiated by the Union's administration, the first notification should be drafted in one of the languages of the Treaty corresponding to the Member State in which the party is located.
- 39) The principle of transparency and the right of access to documents have a particular importance under an administrative procedure without prejudice of the legislative acts adopted under Article 15(3) TFEU. Any limitation of those principles should be narrowly construed to comply with the criteria set out in Article 52(1) of the Charter and therefore should be provided for by law and should respect the essence of the rights and freedoms and be subject to the principle of proportionality.
- 40) The right to protection of personal data implies that without prejudice of the legislative acts adopted under Article 16 TFEU, data used by the Union's administration should be accurate, up-to-date and lawfully recorded.
- 41) The principle of protection of legitimate expectations derives from the rule of law and implies that actions of public bodies should not interfere with vested rights and final legal situations except where it is imperatively necessary in the public interest.

Legitimate expectations should be duly taken into account where an administrative act is rectified or withdrawn.

- 42) The principle of legal certainty requires Union rules to be clear and precise. That principle aims at ensuring that situations and legal relationships governed by Union law remain foreseeable in that individuals should be able to ascertain unequivocally what their rights and obligations are and be able to take steps accordingly. In accordance with the principle of legal certainty, retroactive measures should not be taken except in legally justified circumstances.
- 43) With a view to ensuring overall coherence in the activities of the Union's administration, administrative acts of general scope should comply with the principles of good administration referred to in this Regulation.
- 44) In the interpretation of this Regulation, regard should be taken especially to equal treatment and non-discrimination, which apply to administrative activities as a prominent corollary to the rule of law and the principles of an efficient and independent European administration.”

Considering the above, it may be concluded that in the European Parliament resolution of 9 June 2016 for an open, efficient and independent European Union administration the principles are not in the text of the regulation, but can be found in the Preamble of this Resolution. Meanwhile, the application of these principles should be ensured through the rules of the regulation.

After analysing the EU documents which urged the codification of the principles of EU administrative procedures, we examine the principles mentioned in the latest Hungarian and French codifications of administrative procedures. In France, the first Administrative Procedure Act called the ‘Code des relations entre le public et l’administration’ (hereinafter referred as CRPA) just came into force on 1 January 2016. So France joined the group of countries that have a *lex generalis* regarding administrative procedures. In Hungary, the first Administrative Procedure Act was the Act IV of 1957. In the last sixty years this Act has been globally modified several times. In 2016, as part of the Public Administration Reform in Hungary, a completely new Code of the General Rules of Administrative Proceedings and a new Code of Administrative Justice were presented to Parliament, which included fundamental changes. On 1 January 2018 the new Codes: Act CL of 2016 on General Public Administration Rules (hereinafter referred as *Ákr.*) and Act I of 2017 on Administrative Justice (hereinafter referred as *Kp.*) enter into force.²² The *Ákr.* contains the general rules of Hungarian administrative procedures and the *Kp.* regulates the judicial review procedure of administrative decisions.

²² The Code of Administrative Justice was first accepted on 6 December 2016, and abolished by the Constitutional Court by the Decision 1/2017. (I. 17.) because one part of the Act was unconstitutionally accepted by Parliament.

3. GENERAL PRINCIPLES IN THE NEW HUNGARIAN ADMINISTRATIVE PROCEDURE ACT

In Hungary, the principles of administrative procedure were first regulated in the Administrative Procedure Act in 1981 (Act I of 1981). The latest Hungarian codification regarding the general rules of the administrative procedures, the Ákr. also contains the general principles of administrative procedure. The principles are named and detailed in the text of the Ákr.²³

Before the detailed examination of the general principles mentioned in the Ákr., we should highlight that in Article 1 of the Ákr. we can find a citation of the Fundamental Law of Hungary.²⁴ More precisely, the Ákr. mentions the right to good administration (Article XXIV of the Fundamental Law of Hungary) and the right to legal remedy (Article XXVIII of the Fundamental Law of Hungary). Article XXIV of the Fundamental Law of Hungary states that: “(1) Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to give reasons for their decisions, as provided for by an Act. (2) Everyone shall have the right to compensation for any damage unlawfully caused to him or her by the authorities in the performance of their duties, as provided for by an Act.” Meanwhile, Article XXVIII of the Fundamental Law of Hungary ensures the right to legal remedy, as follows: “(1) Everyone shall have the right to have any charge against him or her, or his or her rights and obligations in any litigation, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act.”²⁵

We shall note, that all principles mentioned in the Ákr. must be applied in all administrative procedures. These principles give guidelines in every single process of administrative decision-making and can be directly enforced.²⁶ Expressing the normative content of the principles is a very important issue, and it is gratifying that the legislator also regulates the principles in this way. In the Ákr., the legislator even states that all participants of the administrative procedure shall act in accordance with the principles and rules governing the administrative procedure. The general principles defined in the Ákr. have a distinctive reference to the administrative authorities or clients or other participants of the administrative procedures (such as witnesses, official witnesses, experts, interpreters, holders of

²³ See for the presentation of the general principles codified in the Administrative Procedure Act (Act CXL of 2004) before the Ákr.: BOROS Anita (2014): Act on Administrative Proceedings. In PATYI András – RIXER Ádám eds.: *Hungarian Public Administration and Administrative Law*. Passau, Schenk Verlag. 425–432.

²⁴ See PATYI András – TÉGLÁSI András (2014): The Constitutional Basis of Hungarian Public Administration. In PATYI András – RIXER Ádám eds.: *Hungarian Public Administration and Administrative Law*. Passau, Schenk Verlag. 209–212.

²⁵ Regarding the judicial review of administrative acts and the rule of law see PATYI András (2015): The Courts and the Judiciary. In VARGA Zs. András – PATYI András – SCHANDA Balázs: *The Basic (Fundamental) Law of Hungary, A Commentary of the New Hungarian Constitution*. Clarus Press, NUPS. 204–213.

²⁶ See explanatory memorandum of the Ákr.

articles of inspection, clients' representatives) or all of them.²⁷ The principles mentioned in the Ákr. regarding administrative authorities are the principle of legality, the principle of ex officio and the principle of effectiveness.²⁸ The principles regulated in the Ákr. regarding clients are the right to make statements and the right to be informed about clients' rights and obligations. Finally, the administrative authorities and the client and other participants of the administrative procedures are bound by the principle of good faith and the principle of trust.

Firstly, for administrative authorities, the Ákr. specifies several important requirements of the principle of legality. It states that the administrative authorities shall act on the basis of the law and that the powers of the administrative authorities shall be used within the framework of the law. Apropos of the exercise of the powers of administrative authorities, the legislator adds further elements: administrative authorities shall exercise their powers in a professional manner in accordance with the principles of efficiency, simplicity and in cooperation with clients of the administrative proceedings. The administrative authorities shall act in good faith. Then, the principle of equality before the law and the principle of equal treatment are also defined and linked to the principle of legality: the administrative authorities shall exercise their powers without undue discrimination, bias or prejudice. Finally, but as an important requirement, it is stated that administrative authorities shall act in reasonable time, within the deadline set by the law. The next principle regarding administrative authorities is the principle of ex officio. The Ákr. defines three cases of the realisation of this principle. Regarding the opening of administrative procedures, the Ákr. states that administrative authorities may open proceedings ex officio, apart from those which may be opened only upon request, and may continue proceedings that were opened upon request under the conditions laid down by law. Vis-à-vis ascertaining the relevant facts of the case, the administrative authorities shall ex officio ascertain the relevant facts of the case and specify the type and extent of evidence admissible. Ultimately, the administrative authorities may review their own decisions, and proceedings as well as decisions and/or the proceedings of other authorities under their supervisory competence.²⁹ The final principle applicable only to administrative authorities is the principle of effectiveness. Article 4 of the Ákr. states that the administrative authorities shall organise their activities to entail the lowest costs for participants of the administrative procedure. The administrative authorities shall use advanced technology, and shall close out the proceedings as fast as possible.

²⁷ See BALOGH-BÉKESI Nóra (2016): Alapelvek a közigazgatási hatósági eljárásban. Új Magyar Közigazgatás, 2016. december. 12.

²⁸ The proposal, with the simultaneous codification of the principles of legality and efficiency ends the discussion between the two scientists, Zoltán Magyary and István Bibó with the victory of both scientists. Zoltán Magyary always emphasized the efficiency of public administration, while István Bibó the principle of legality. See BIBÓ István (1986): Jogszerű közigazgatás, eredményes közigazgatás, erős végrehajtó hatalom. In VIDA István – NAGY Endre (eds.): *Válogatott tanulmányok I.* Budapest, Magvető. 294.

²⁹ See Article 3 of the Ákr.

The principles regarding clients declare the right to make a statement and present the clients' views during the whole administrative procedure. Within administrative procedures, administrative authorities shall guarantee presenting clients' and other participants' rights and obligations. Authorities have to help them to exercise their rights.³⁰

Finally, the Ákr. regulates principles (principle of good faith and the principle of trust) which shall be applied to all participants of the administrative procedures. According to Article 6 of the Ákr., all participants of administrative procedures are required to act in good faith and to cooperate with each other. The principle of good faith means that participants of the administrative procedures may not engage in conduct aimed to mislead authorities, nor to delay the decision-making process or the enforcement procedure. The good faith of clients or other parties of administrative proceedings shall be presumed, and the burden of proof for bad faith lies with the authorities.

Regarding provisions stating principles of administrative procedure in the Ákr., we can conclude that although the act does not aim to be exhaustive, it draws the general characteristics of the administrative procedures. The Ákr. only details few of the principles like the principle of legality; and as we have seen, other principles are only listed. By referring to the Fundamental Law in the Ákr., all interpretations of the principles by the Constitutional Court should be also respected during the administrative procedures.³¹

4. GENERAL PRINCIPLES IN THE NEW FRENCH ADMINISTRATIVE PROCEDURE ACT

First of all, we need to note, that in France all procedures in administrative cases before Administrative Courts are regarded as administrative procedures ("la procédure administrative").³² If we try to find the notion of proceedings of the administrative authorities – which includes the issues of administrative actions in accordance with the legislation in an individual case (ergo the Hungarian definition of administrative procedures)³³ – in French it is "la procédure administrative non contentieuse" (hereinafter for this kind of procedures we also use the expression administrative procedures).³⁴

³⁰ See Article 5 of the Ákr.

³¹ The Ákr. does not contain all principles (like the right of the client to the right that was acquired and exercised in good faith) which where codified before in the Administrative Procedure Act. See BALOGH-BÉKESI Nóra (2016): *Alapelvek a közigazgatási hatósági eljárásban*. Új Magyar Közigazgatás, 2016. december. 14.

³² BAILLEUL, David (2014): *Le procès administratif*. Lextenso éditions, LGDJ.

³³ See PATYI A. et al. (2009): *Közigazgatási hatósági eljárásjog*. Budapest–Pécs, Dialóg Campus Kiadó. 19–30.

³⁴ GONDOUIN, Geneviève – INSEGUET-BRISSET, Veronique – VAN LANG, Agathe (2011): *Dictionnaire de droit administratif (6e édition)*, Sirey – Dictionnaires. Édition Dalloz. 341–342.

The idea of codification of administrative procedures is quite old in France.³⁵ In the '70s several acts were adopted regarding the simplification of relations between the administrative authorities and the citizens.³⁶ From the '80s, the legislator tried to codify or partly regulate the general rules of administrative procedures under different names like the Decree 83-1025 of the 28th of November 1983 regarding the relations between the administration and the users, the draft of the Code of Administration from the '90s,³⁷ the Act 2000-321 of 12 April 2000 on the rights of citizens in their relations to administrations.³⁸ We should also note the indispensable work of the Superior Commission of Codification in the creation of Codes – also in the creation of the CRPA – from the end of the '80s.³⁹ In 2011, the Superior Commission of Codification suggested to codify administrative procedures on new foundations. In December 2012, the Interdepartmental Committee for Government Modernisation put the issue of codification of administrative procedure rules again on its agenda. The Circular of 27 March 2013 of the Prime Minister Jean-Marc Ayrault mentioned the CRPA as a Code which absolutely needs to be created on new fundamentals. The Act of 12 November 2013 authorised the government to simplify the relations between citizens and the public administration and to codify it by an ordonnance. The CRPA was codified by Ordonnance 2015-1341 of 23 October 2015 (CRPA part in act level) and Ordonnance 2015-1342 of 23 October 2015 (CRPA part in decree level). The CRPA came into force on 1 January 2016.⁴⁰ Consequently, France joined the countries which have a codified act regarding general rules of administrative procedures.⁴¹

The CRPA is a more complex code than the Hungarian Ákr.⁴² It regulates all fields where the public can get in relation with administration. The CRPA contains preliminary provisions and five books. The preliminary provisions define the CRPA's relation with other acts, the notion of administration and the public (ergo to whom the code should be applied) and the principles of administrative procedure. Book I of CRPA is named: Les échanges avec

³⁵ SCHWARTZ, Rémy (2004): *Le code de l'administration. Actualité Juridique de Droit Administratif*. 1860. Several theoretical studies also urged the codification of the administrative procedures see WEINER, Céline (1975): *Vers une codification de la procédure administrative: étude de science administrative comparée*. Paris, Presses Universitaires de France.

³⁶ See Loi n°73-6 du 3 janvier 1973 instituant un Médiateur de la République, Loi n° 79-587 du 11 juillet 1979 relative à la motivation des actes administratifs et à l'amélioration des relations entre l'administration et le public.

³⁷ In the original concept, this Code was never finished. See GONOD, Pascale (2014): *Codification de la procédure administrative, La fin de « l'exception française »?* AJDA. 395.

³⁸ See DELAUNAY, Bénédicte (2000): La loi du 12 avril 2000 relative aux droits des citoyens dans leurs relations avec les administrations. *Revue du Droit Public et de la Science Politique en France et à l'Étranger*. 1201–1221.

³⁹ Décret n°89-647 du 12 septembre 1989 relatif à la composition et au fonctionnement de la Commission supérieure de codification.

⁴⁰ See VIALETES, Maud – BARROIS DE SARIGNY, Cécile (2016): *La fabrique d'un code*. RFDA. 4.

⁴¹ See POLLÁK Kitti (2017): Történeti vázlat a francia közigazgatási eljárásjogi kodifikáció mérföldköveiről. *Eljárásjogi Szemle*, 2017/1. 43–48; POLLÁK Kitti (2017): *Quo Vadis: Codification of Administrative Procedure Rules in Hungary and in France*. In NEMEC, Juraj: 25th NISPAcee Annual Conference: Innovation Governance in the Public Sector. Kazan, Oroszország, 2017.05.18–2017.05.20. Bratislava: NISPAcee. 1–8.

⁴² The Hungarian Ákr. mostly regulates questions determined in the Book II of the CRPA.

l'administration, and contains all regulations related to the ways how to initiate contact between the public and administration. Book II of the CRPA gives a very detailed description of rules regarding unilateral decisions issued by the administrative bodies. The rules on access to administrative documents and the re-use of public information can be found in Book III of CRPA. In Book IV of CRPA we find alternative dispute regulations: the legal remedy possibilities against administrative decisions ("recours administratifs"), the mediation, etc. In Book V of CRPA there are provisions regarding the Overseas Territories of France.⁴³

As we already mentioned, in the preliminary provisions of the CRPA the most important principles are reaffirmed. It has a more symbolic significance than a normative. In this way the CRPA is more similar to the Model Rules. Certainly, the principles expressed in the French constitution should also be respected. Article L100-2 of the preliminary provisions of the CRPA states that: "The administration acts in the public interest and respects the principle of legality. It is bound by the obligation of neutrality and it should respect the principles of laïcité. It complies with the principle of equality and guarantees impartial treatment."

We can find six principles (principles and obligations) specified in the preliminary provisions of the CRPA: the principle of legality, the principles of laïcité, principle of equality and the obligation to act in public interest, the obligation of neutrality, the obligation to guarantee impartial treatment. In the preliminary provisions of the CRPA, only some of the main principles applicable in the administrative procedures are named, but they are not explained.

We shall also note that all principles mentioned in the preliminary provisions of the CRPA create obligations for the administrative authorities only, and not for the public or other participants of the administrative procedures.⁴⁴ Finally, we should remark that other principles are also named in the Books of the CRPA, which should be applied in the scope of that Book, like in Book II Section 1: Principe of silence might be taken as a sign of acceptance (Articles L231-1 to D231-3).

In summary, we can state that the regulation of the principles mentioned in the CRPA is only a list of the most important principles which should be respected by the administrative authorities during the administrative proceedings.

5. CONCLUSION

After the detailed presentation of the principles mentioned in the latest three most important EU documents regarding the codification of administrative procedures: European Parliament resolution of 15 January 2013 with recommendations to the Commission

⁴³ POLLÁK Kitti (2016): KET. „francia módra” – Az új francia Közigazgatási Eljárési Kódex. *Eljárásjogi Szemle*, 2016/3. 26–31.

⁴⁴ See *Code des relations entre le public et l'administration annoté et commenté*. 1re édition, Dalloz, 2016. 9–10.

on a Law of Administrative Procedure of the European Union, the Model Rules and the European Parliament resolution of 9 June 2016 for an open, efficient and independent European Union administration; we gave a detailed overview of the principles regulated in the new Hungarian and French Administrative Procedure Acts. We can conclude that the regulation of the principles in the Hungarian and French Administrative Procedure Acts and in the EU documents have some similarities, such as the fact that they all mention the principle of legality. Although the way of the regulation (listing only the principles or giving a detailed explanation of the principle) and also the position of the principles is still quite different. The French codification of principles of administrative procedure (just a list of principles of administrative procedure without explanation in the preliminary provisions) is more similar to the Model Rules than the Hungarian codification. Ultimately, we would like to emphasise that we find extremely important the codification of principles of administrative procedure in the administrative procedure acts, and the fact is also very welcomed that the newest codifications still regulate the principles of administrative procedure.

REFERENCES

- BAILLEUL, David (2014): *Le procès administratif*. Lextenso éditions, LGDJ.
- BALOGH-BÉKESI Nóra (2016): Alapelvek a közigazgatási hatósági eljárásban. Új Magyar Közigazgatás, 2016. december. 12.
- BALOGH-BÉKESI Nóra (2017): Alapelvek a Modell Szabályok I. Könyvének általános rendelkezéseiben. *Pro Publico Bono – Magyar Közigazgatás*, 2017/2. Különszám, 27.
- BIBÓ István (1986): Jogszerű közigazgatás, eredményes közigazgatás, erős végrehajtó hatalom. In VIDA István – NAGY Endre (eds.): *Válogatott tanulmányok I.* Budapest, Magvető. 294.
- BOROS Anita (2014): Act on Administrative Proceedings. In PATYI András – RIXER Ádám eds.: *Hungarian Public Administration and Administrative Law*. Passau, Schenk Verlag. 425–432.
- BOROS Anita (2017): Modell Szabályok az I. Könyvben. *Pro Publico Bono – Magyar Közigazgatás*, 2017/2. Különszám, 49.
- Code des relations entre le public et l'administration annoté et commenté*. 1re édition, Dalloz, 2016.
- DELAUNAY, Bénédicte (2000): La loi du 12 avril 2000 relative aux droits des citoyens dans leurs relations avec les administrations. *Revue du Droit Public et de la Science Politique en France et a l'Etranger*. 1201–1221.
- GONDOUIN, Geneviève – INSERGUET-BRISSET, Veronique – VAN LANG, Agathe (2011): *Dictionnaire de droit administratif (6e édition)*, Sirey – Dictionnaires. Édition Dalloz.
- GONOD, Pascale (2014): *Codification de la procédure administrative, La fin de « l'exception française »?* AJDA. 395.
- HARLOW, Carol – RAWLINGS, Richard (2014): *Process and Procedure in EU Administration*. United Kingdom, Hart Publishing.
- PATYI András et al. (2009): *Közigazgatási hatósági eljárásjog*. Budapest–Pécs, Dialóg Campus Kiadó. 19–30.
- PATYI András – TÉGLÁSI András (2014): The Constitutional Basis of Hungarian Public Administration. In PATYI András – RIXER Ádám eds.: *Hungarian Public Administration and Administrative Law*. Passau, Schenk Verlag. 209–212.
- PATYI András (2015): The Courts and the Judiciary. In VARGA Zs. András – PATYI András – SCHANDA Balázs: *The Basic (Fundamental) Law of Hungary, A Commentary of the New Hungarian Constitution*. Clarus Press, NUPS. 204–213.
- POLLÁK Kitti (2015): Directions for the Regulation of Legal Remedies in the Light of Model Rules on EU Administrative Procedure. In GERENCSÉR Balázs – BERKES Lilla – VARGA Zs. András eds.: *Current Issues of the National and EU Administrative Procedures*. Budapest, Pázmány Press. 409–419.
- POLLÁK Kitti (2016): KET. „francia módra” – Az új francia Közigazgatási Eljárási Kódex. *Eljárásjogi Szemle*, 2016/3. 26–31.
- POLLÁK Kitti (2017): Történeti vázlat a francia közigazgatási eljárásjogi kodifikáció mérföldköveiről. *Eljárásjogi Szemle*, 2017/1. 43–48.
- POLLÁK Kitti (2017): *Quo Vadis: Codification of Administrative Procedure Rules in Hungary and in France*. In NEMEC, Juraj: 25th NISPAcee Annual Conference: Innovation Governance in the Public Sector. Kazan, Oroszország, 2017.05.18–2017.05.20. Bratislava: NISPAcee. 1–8.

- ROZSNYAI Krisztina (2013): A hatékony jogvédelem biztosítása a közigazgatási bírászkodásban. *Acta Humana Emberi Jogi Közlemények*, 2013/1. 117–130.
- SCHWARTZ, Rémy (2004): *Le code de l'administration. Actualité Juridique de Droit Administratif*. 1860.
- VÁCZI Péter (2013): *A jó közigazgatási eljáráshoz való alapjog és annak összetevői*. Budapest–Pécs, Dialóg Campus.
- VIALETTES, Maud – BARROIS DE SARIGNY, Cécile (2016): *La fabrique d'un code*. RFDA. 4.
- WEINER, Céline (1975): *Vers une codification de la procédure administrative: étude de science administrative comparée*. Paris, Presses Universitaires de France.

Dr. Nóra Balogh-Békesi PhD, (balogh.bekesi.nora@uni-nke.hu) Associate Professor at the Constitutional Law Department of the Pázmány Péter Catholic University Faculty of Law and Political Sciences and Lajos Lőrincz Institute of Administrative Law of National University of Public Service Faculty of Science and Public Governance and Administration. Her main subjects of research are sovereignty transfer, relationship between EU law and domestic law, administrative procedure law, right to fair administration, impact of procedural principles on jurisprudence.

Dr. Kitti Pollák, (pollak.kitti@uni-nke.hu) Assistant Lecturer at Lajos Lőrincz Institute of Administrative Law of National University of Public Service, Faculty of Science and Public Governance and Administration; legal secretary at the Institute for Research and Development on State and Governance; invited teacher at the University of Szeged, Faculty of Law and Political Sciences. Her main subjects of research are administrative procedure law, administrative justice, EU administrative law, French administrative law.