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# GOOD GOVERNANCE — CONSTITUTIONAL GUARANTEES OF THE BASIC RIGHT WITHIN THE FRAMEWORK OF THE CONSTITUTIONAL REFORM IMPLEMENTED IN GEORGIA

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## ABSTRACT

This paper discusses good governance as a basic right. It details the constitutional guarantees for fair administrative proceedings envisaged within the framework of the constitutional reform implemented in Georgia. In particular, a new provision ensuring the involvement of natural or legal person in the process of public administration was included in the Constitution as a result of the reform: Article 18 of the Constitutional Law of Georgia On Amending the Constitution of Georgia states that everyone has the right to a fair hearing of his/her case by an administrative body within a reasonable time.

This paper discusses the integral elements of good governance as a basic right and its limitations, specifically the right of a person to apply to an administrative body to satisfy his/her interests and requirements; participate in administrative proceedings; and be familiarized with the materials of a case. It also outlines the obligation of an administrative body to substantiate its decision and hear cases within a reasonable time.

## **Good Governance – Constitutional Guarantees of the Basic Right within the Framework of the Constitutional Reform Implemented in Georgia**

- I. Introduction**
- II. Good governance as a basic right**
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### **I. INTRODUCTION**

The necessity to include good governance as a basic right was identified during the constitutional reform process in Georgia. Article 18 of the Constitutional Law of Georgia On Amending the Constitution of Georgia ensures the right of every person to a fair hearing of his/her case by an administrative body within a reasonable time; the right of a person to be familiarized with the public information that exists in public institutions; and the right to full compensation for damages unlawfully caused by the organs of the state.<sup>1</sup>

While this provision is new for Georgian legislation, it already exists in Europe under Paragraph 1 of Article 6 of Treaty on European Union and Article 41 of the EU Charter of Fundamental Rights. Consequently, the existence of this innovative provision and the constitutional guarantees for its realization are a welcoming development. It establishes the rights to fair administrative proceedings and access to public information, which are new ideas for Georgian legislation. This paper will analyze the interpretation of the article that establishes good governance as a basic right in the Constitution adopted by the Parliament of Georgia. In addition, it will define the essence of administrative proceedings as a basic right as well as the integral elements and limitations of this right.

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<sup>1</sup> Article 18. Rights to Fair Administrative Proceedings, Access to Public Information and Compensation for Damages Inflicted by the Public Authorities:

1. Everyone has the right to a fair hearing of his/her case by an administrative body within a reasonable time.
2. Everyone has the right to get familiarized with information and official documents about him/her that exist in public institutions according to the rule established by law, unless they contain state or commercial secrets.
3. Everyone has the right to get familiarized with information and official documents existing in public institutions according to the rule established by law unless they contain state and commercial secrets.
4. Everyone shall be entitled to full compensation for damages unlawfully caused by the organs of the state, of the autonomous republics and self-government or their employees from the state funds or funds of the autonomous republic and local self-government bodies, respectively. (compare: <https://matsne.gov.ge/ka/document/view/30346>)

## II. GOOD GOVERNANCE AS A BASIC RIGHT

In 2000, the catalogue of rights of the EU Charter of Fundamental Rights was extended to include good governance as a right for the first time. Good governance aims at improving the relationship between public administration and individuals. The basic right to good governance, provided in the EU Charter of Fundamental Rights, is primarily oriented on the intensity of actions of EU citizens and the satisfaction of their initiatives and requirements. Moreover, in 2007, the Council of Europe adopted the recommendation<sup>2</sup> on good governance, setting the key principles that an administrative body must follow to achieve good governance. Within the framework of the EU-Georgia Association Agreement, in 2014 Georgia assumed the obligation to enhance good governance.<sup>3</sup> According to the Agreement, the parties reaffirmed their respect for the rule of law and obligation to consider Good Governance Principles.

Good governance combines several rights, including the right of a person to apply to an administrative body; participate in administrative proceedings; be familiarized with the materials of a case as well as the reasoning for a decision by an administrative body; receive compensation for damages; and guarantee the subject of the case understands the language of the administrative proceedings.

An important element of good governance is the right of a person to apply to an administrative body. This right is restricted by the subjective right of a natural or legal person, as it relates to a person's legitimate interests, which is directly affected by an administrative legal act or an action of administrative body. It is worth noting that a person's right to fair administrative proceedings is an important element of the principles of a legal state and democracy because it is an important mechanism that regulates relations between the state and an individual; ensures the effective realization of a person's constitutional right; and provides protection against unjustified interference in a person's rights.<sup>4</sup>

A citizen is assigned an active role in modern administrative proceedings. At the same time, administrative proceedings obligate an administrative body to hear all the parties to a case, investigate all circumstances of a case, follow the reviewing timeframe of the case hearing, and substantiate its decision. These steps ensure fair and objective decision-making by an administrative body. Yet another integral element of good governance is the obligation of an administrative body to take a substantiated decision. A substantiated decision may only be taken following the comprehensive investigation of the circumstances of a case. The General Administrative Code of Georgia requires an administrative body to investigate all the significant circumstances of a case during the course of the administrative proceedings and to make a decision after evaluating and comparing the circum-

<sup>2</sup> Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good governance.

<sup>3</sup> The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. <https://matsne.gov.ge/ka/document/view/2496959>

<sup>4</sup> See, Tskhadadze K., Right to Fair Administrative Proceedings; Journal Academic Digest, Special Edition, Tbilisi, 2017. P. 42.

stances.<sup>5</sup> Consequently, it is unacceptable to use a circumstance or fact as the basis of a decision of administrative body, if it has not been investigated by an administrative body.

The most important stage in administrative proceedings involves the investigation of the circumstances of a case; the establishment of significant circumstances of the case; the comparison of the facts and factual circumstances; and finally, the determination of an adequate legal outcome. The proper execution of this stage is a fundamental part of ensuring fair administrative proceedings.

The General Administrative Code of Georgia defines the right of an administrative body, based on the circumstances of a case, to require documents, obtain necessary information, survey the scene of an incident, schedule an examination, and apply other measures provided for by law for the collecting, examining and evaluating of evidence.<sup>6</sup>

In order to take a substantiated decision and to comprehensively investigate the circumstances of a case, the most important element is to hear the interested parties. The right of a person to be heard by an administrative body is an integral element of good governance. An administrative body is entitled to issue an administrative-legal act only after hearing from all persons whose right or legitimate interests are affected by this act.<sup>7</sup> A person has the right to submit his/her opinions both in writing and in oral form during an oral hearing; this facilitates not only the protection of the right of interested persons to express their opinions, but also helps the administrative body in studying and investigating all circumstances of a case, thereby contributing to quality decision-making.

A characteristic feature of administrative law is the timely and effective implementation of public administration. Consequently, good governance ensures the implementation of administrative proceedings within a short period of time; proceedings cannot continue indefinitely as that would be a violation of a person's right. Therefore, the law obliges an administrative body to issue a relevant decision within a specified timeframe. This obligation – the protection of citizens' rights as well as the satisfaction of their interests within a short period of time – differentiates public administration from other types of administrative body activities.

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<sup>5</sup> Compare, Paragraph 1 of Article 96 of The General Administrative Code of Georgia, Georgian Legislative Herald, 32(39), 15/07/1999, <https://matsne.gov.ge/ka/document/view/16270>

<sup>6</sup> Ibid., Paragraph 1 of Article 75.

<sup>7</sup> See, Adeishvili, Vardiashvili et al., Textbook of General Administrative Law, Tbilisi, Bona Causa, 2005, p. 248.

### III. AIM AND ESSENCE OF GOOD GOVERNANCE WITHIN THE FRAMEWORK OF IMPLEMENTED CONSTITUTIONAL REFORM

According to Paragraph 1 of Article 18 of the Constitutional Law of Georgia on Amending the Constitution of Georgia, everyone has the right to a fair hearing of his/her case by an administrative body within a reasonable time.

According to this provision, the subject of the basic right is “everyone”, which implies every physical or legal person. However, despite introducing a broad term in the provision, the circle of subjects is limited by “his/her case”, which means that this basic right is limited to a person’s public-subjective right.<sup>8</sup> A subjective right of a person implies the right of a person granted under the law to require that others fulfill an action that serves to protect his/her interests. This implies ensuring both the material and procedural right.<sup>9</sup> Consequently, this right enables a person to apply to the state to ensure his/her interests and demand that it implements a concrete action.

One should mention here Paragraphs 2 and 3 of Article 18, which ensure the right of everyone to have access to information and official documents, according to the rule established by law, unless they contain state or commercial secrets.<sup>10</sup> Paragraph 2 of Article 18 concerns the subjective right of a person to be familiarized with the information about him/her that exists in public institutions, while Paragraph 3 ensures the right of everyone to access public information kept at public institutions.

This provision ensures, on the one hand, the right of a person to obtain public information from public sources and, on the other hand, the obligation of the state not to disclose information that contains secrets. Consequently, this right is obligation of the state to prevent access to this type of information. Thus, this provision is directly linked to the existence of the subjective right of the individual, in particular, the right of access to documents and the materials related to a case when a legitimate interest exists. The version of the Constitution effective today, namely, Paragraph 1 of Article 41, reinforces the right of access to official documents kept at public institutions, in accordance with the rule established in the law. According to this provision, every Georgian citizen has the right to access information as defined by law, as well as official documents about him/her kept at state institutions, unless they contain state, professional, or commercial secrets.<sup>11</sup> Paragraph 2 of Article 18 of the new version of the draft Constitution, however, provides for a higher degree of protection of the right of access to public information. In particular, this right will be enjoyed by any person, not only citizens of Georgia, according to the current Constitution. The right of access to information kept in official state documents ensures effective participation in the process of public administration, which is the key requirement of the principle of a democratic and legal state. The right of access to official state documents is an integral part of creating open governance in the state

8 See, Tskhadadze K., Right to Fair Administrative Proceedings; Journal Academic Digest, Special Edition, Tbilisi, 2017. P. 42

9 See, Tskhadadze K., Institute of Representative in Administrative Law, dissertation thesis for doctoral degree, 2016, [http://press.tsu.ge/data/image\\_db\\_innova/disertaciebi\\_samartali/qetevan\\_cxadadze.pdf](http://press.tsu.ge/data/image_db_innova/disertaciebi_samartali/qetevan_cxadadze.pdf)

10 Compare, <http://constitution.parliament.ge/uploads/masalebi/konstitucia-gadasinjva-cvileba.pdf>

11 Compare, Paragraph 1 of Article 41 of Constitution of Georgia, <https://matsne.gov.ge/ka/document/view/30346>

and, consequently, is important for the establishment and maintenance of a democratic and pluralistic society. This right implies the state's obligation to create appropriate guarantees to inform citizens about public issues.<sup>12</sup>

The new version of Constitution, namely, Paragraph 4 of Article 18, ensures the right of a person to demand, through a court, full compensation from the state funds or funds of the autonomous republic and local self-government bodies, respectively, for damages unlawfully caused by the organs of the state, the autonomous republics and self-government or their employees. It should be noted that the issue of the responsibility of the state is an important element of a legal state. Consequently, its constitutional guarantees create an important legal basis in terms of the protection of a person's right. It should be noted that Paragraph 9 of Article 42 of the current Constitution contains a provision which is analogous to that in Paragraph 4 of Article 18 of the Draft Constitutional Law of Georgia. Thus, according to these provisions, the state is responsibility for damages it unlawfully causes. This provision is reinforced by Article 208 of the General Administrative Code of Georgia,<sup>13</sup> according to which the state shall be liable for damages inflicted by an administrative body, and by its officials, other state employees or public servants in the course of performing their official duties.

## IV. CONCLUSION

The right to participate in administrative proceedings provides an individual with the possibility to protect his/her interests; inquire into public issues which are interesting for him/her; ask questions; consider whether administrative functions were adequately performed; and be an active participant in decision-making and the implementation of issues of public importance. Moreover, transparency increases the level of accountability of public institutions and their efficiency.

In an open government, public bodies/officials expect members of the public to check on the quality of their work and if poor performance is observed, they know they may be held responsible legally as well as politically.

According to the new version of the Constitution presented by the Parliament, the codification of good governance as a fundamental right in the basic law of the country will contribute to the protection of individual rights and the efficiency of public administration. Consequently, such a provision represents a new category of basic rights and makes the main principles of administrative proceedings subject to explicit provisions of the country's constitution. This is a new addition for Georgian legislation and will help develop good governance as a basic right.

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<sup>12</sup> Compare, Decision of the Constitutional Court of Georgia №1/4/757, dated 27 March 2017, on the case Citizen of Georgia Giorgi Kraveishvili vs. Government of Georgia (II-4).

<sup>13</sup> Compare, Paragraph 1 of Article 208 of the General Administrative Code of Georgia.