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Improving the application of administrative law by adopting principles of good administration – may Germany learn from European Communities' legal practice and the Council of Europe's Recommendation ?

REPORT PRESENTED BY

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1.

The following observations are inspired by experiences of certain shortcomings in public administration of the German Länder or local governments not meaning that there would be no reason for criticism in the Federal administration, too.

Since the European Council in Nice took notice of the Charter of Fundamental Rights in Germany criticism has been raised over whether or not the rather general regulation of Article 41 could improve administrative law and legal practice. As the Charter will come into force before too long the question is becoming more crucial than ever.

Now that the Council of Europe has published the Recommendation CM/Rec(2007)7 with a comprehensive model code on good administration, I have asked myself if these provisions may be a challenge also for Germany – the native country of Max Weber and Otto Maier; in honour of both of them, we are making efforts to develop high standards of administrative quality.

I felt encouraged in my critical hypothesis both from the sides of theory and practice. Therefore I changed my approach from mere "challenge" to "improving" thus searching for possibilities to arrive at substantial changes for the better of German administrative law practices.

2.

"From 1 November 2007 citizens in North-Rhine Westphalia will obtain their rights more rapidly than before." This is a quotation, taken from the official press item of the North Rhine-Westphalian (NRW) Ministry of the Interior, dated 31 October, and can be read in the daily papers of 1 November 2007.

What did happen? What has changed this month?

Is it that this most populated Bundesland (more than 17 million inhabitants, after all) improved its administrative legislation?

Or has North Rhine-Westphalia evaluated the services delivered by staff and taken up new quality management strategies?

Or has North-Rhine Westphalia enforced measures in compliance with the Council of Europe Recommendation on GOOD ADMINISTRATION?

Well, let me keep up the suspense for just a few more minutes! I will reveal the secret piecemeal.

First of all: It was not, that North Rhine Westphalia passed new administrative legislation in order to improve administrative law. Although new legislation came into force - the second bill on "Reduction of bureaucracy" (in German: Bürokratieabbaugesetz II- Gesetz- und Verordnungsblatt NRW Nr. 21 of 16 October 2007) - the effect may be to the opposite.

We will examine that before too long.

Evaluation seems a better approach to the solution of the riddle – but it was not so much the quality of administrative products but the efficiency of the system that the government put the focus on. I will not deny that efficiency is a parameter of good administration and "value for money" is part of the Recommendation on GOOD ADMINISTRATION. But focusing too much on cuts in expenditure and making it the overall goal of new solutions may endanger a reduction of procedural rights.

Indeed: The press item – the above quoted note from the Ministry of the Interior – referred to that previously identified second bill on reduction of bureaucracy; but the bill defines reduction not by making legal protection more efficient and less expensive but instead by abolishing a special system of legal protection against administrative decisions, which dates back to the 19th century (Prussian reforms) and was established in the

Administrative Process Act of 1960 and then codified in the Administrative Procedure Act of the early 1970s.

This internal administrative appeal by request of the private person whose rights or interests are directly affected (cf. Article 22 Model Code of good administration) – we will call it internal protest procedure, because it is opened by the private person when lodging a protest to the administrative authority who issued the decision. This respective authority has to examine the case under the aspects of lawfulness and discretion and then either to redress or to forward the protest to the next level which then will decide upon the case by using the same criteria and standards. (German expression: Widerspruchsverfahren).

3.

At first sight the abolition of an internal review might not be dramatic, especially if the right to lodge a judicial review is not touched – but the moment you promote this abolition of procedural rights as a gain of rights, you discredit the whole internal administrative procedure as being unable to grant rights, legal positions or guarantee the respect of interests.

As a consequence of this statement ("citizens ... obtain their rights" only by an administrative court decision) you deny that administrative procedures commit to the rule of law.

This indeed is the genuinely serious impact of this published press item.

I hope that this was not intended. Maybe it was nothing but a "lapsus linguae" – or a PR - gig to attract attention by simplifying matters. However, it throws a bad light on the appreciation of such internal administrative procedure by politics and among the general public.

Is public administration really in such a deplorable shape?

What about the administrative law and application of regulations considering the principle of lawfulness?

And finally - can we improve these shortcomings by adopting the idea of GOOD ADMINISTRATION?

After all, I believe that North Rhine Westphalia endorses the statement that the law on administrative procedures even surpasses the standards of GOOD ADMINISTRATION.

Whether or not this is for good reasons I will try to examine.

4.

The Administrative Procedure Act (in German: Verwaltungsverfahrensgesetz, VwVfG) is the fundamental law concerning administrative procedures and decision making processes in Germany – for the Federal Administration and the Bundesländer as well as for the local administration.

All of these laws were passed in the early Seventies – by all of the then 10 Länder and Berlin. They were preceded by the Federal Administrative Procedure Act – mostly of the same text, yes, even with identical numeration of the sections (in German Paragraphen, §§). After the reunification the new Bundesländer adopted quite similar regulation, meaning that we now have 17 Administrative Procedure Acts of more or less the same content (guaranteed by the constitutional principle of homogeneity, Article 28 of the Basic Law – Grundgesetz, GG).
A variety of regulations fix the fundamental principles of administration – mandatory law with rather strict wording.

It is worthwhile recalling them in detail by placing them in systematic order while at the same time face-to-face with the principles of GOOD ADMINISTRATION. This allows us to compare them with the model code on good administration as appended to the Recommendation – and of course with Article 41 of the Charter of Fundamental Rights of the European Union (of 2000), to which the recommendation refers expressis verbis.

5.

You may divide the various principles into four sets of regulations, revealing their systematic structure at the same time.

(1)
A first set of regulations deals with the basic principles of the procedure itself.

a)
An administrative procedure shall be opened by application (request or appeal) of any (private) person (citizen, client, customer)

- Section 22 VwVfG

This Section is well comparable to Articles 12 and 13 of the model code of good administration in a short and clear expression. And the rule on competence is respected by different sections of the rather detailed German Administrative Procedure Acts.

The quality of different wordings I may leave aside till we will consider a case study later.

b)
This Section is followed by regulations on German as official language in public administration, official investigation of the case, and the duty of the administration to consult private persons and support them when contacting them, all of them mandatory for the administration.

- Section 23 -25 VwVfG.
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The Charter of Fundamental Rights of the European Union refers to the official language of the treaties, and thus follows the same principles.

- Article 41 Para 4 EUC.

These provisions are sensible and comply with principles of GOOD ADMINISTRATION.

c)
The right of any (private) person who might be - directly or adversely - affected by a following decision to be heard in advance is respected in all three codes

- Section 28 VwVfG
- Article 14 of the Code of good administration
- Article 41 Para 2 first tire of the EU Charter.

This goes along with the well-known legal proverb in Latin "audiatur et altera pars". Though normally quoted in Latin it is much older than the classical Roman law.

Even here the right to be heard will be applied more effectively and efficiently when the legal provisions recommend internal administrative procedures prior to a judicial review.

d)
The right to inspection of files and disclosure (of information) is generally guaranteed all over the procedure, Section. 29 VwVfG.

This right has to be considered together with the legitimate interests of the administration and those of secrets which are protected by law. Furthermore personal data shall be protected.

Apart from separate legislation on data protection (in Germany we have again, according to our federal system 17 acts on this subject - official abbreviations: BDSG, LDSG) the Administrative Procedure Act protects personal

data, business and trade secrets – except for indispensable reasons.

Section 30 VwVfG

Article 9 and 10 of the code of good administration placed these rights in the scope of privacy and transparency together with personal data protection. Actually, German administrative practice was reluctant about the idea of transparency for a long time, but this changed a few years ago – methinks under the influence both of modern administration and European law. This may be shown by the observation that the word transparency was not appearing in German administrative legislation before the Federal bill on freedom of information was drafted (German Informationsfreiheitsgesetz, IFG of 5. 9. 2005). That act provides access to documents and addresses all actors (authorities and private persons) who execute items of Federal administration falling into the competence of the Federal administration.

Article. 41 Para 2 second sub-paragraph of the EU-Charter is more similar to the the German wording within the Administrative Procedure Act while article 42 of the EU-Charter grants access to EU documents rather clearly.

(2)
A second set of regulations focuses on the content of the decision made in the form of an Administrative act (in German: Verwaltungsakt) of which the important features are: compulsory settlement of a single case with external impact.

a)
Certainty (German expression: Bestimmtheit) and formal requirements (German expression: Form)

Section 37 VwVfG

Article 6 of the Code of good administration does not go beyond this requirement – just the opposite. The brief wording does not give guideline details or exceptions for the connected question of to what extent certainty should go along with a mandate to justify the decision by explaining in detail.

Instead of this the Code of good administration switches to the constitutional principles of retroactivity, which is regulated mostly by Court law, by falling back on constitutional principles connected with the rule of law.

b)
Statement of reasons (in German: Begründung)

Section. 39 VwVfG. Great attention is paid to the principle and even the details of a statement of reasons.
Although the lack of this obligation may lead to a wrongful decision the main effect of this section is to force administrative bodies to justify their decisions by explaining to the (private) person the legal situation and the factual reasons why this decision was taken according to German law. The obligation is compulsory for mandatory decisions and strongly recommended if the law allows discretional decisions.
Needless to say, one of the objectives is what others might call transparency. But first of all it facilitates internal and external review.

Article 17 of the Code on good administration demands for appropriate reasons stating the legal and factual grounds on which the decision was taken.

Article 41, Para 2 third sub-paragraph of the EU-Charter is rather scant.

c)
Discretion

Standards for discretional decisions are set up specially for administrative decisions.

Section. 40 VwVfG does not allow free discretion for administrative authorities. This is different from the judges of the courts who may exercise free discretion when they prepare or pass judgement. Administrative bodies must be committed to the rules of due discretion.

Neither the Code of Good administration nor the EU Charter treat the subject expressly or in any detail, at least as far as can be seen.

d)
Publication of the decision.

Section 41 VwVfG provides a promulgation inter partes – personal notice but normally no public announcement. This is sensible and a compromise because it allows the person concerned to obtain knowledge of the decision while personal data, on the other hand, are protected.

Article 18 of the Code of good administration is of the same kind. But it should be mentioned that this Article takes note of the indication of appeal procedures including respect of a certain time frame.

There is no comparable section in the German Administrative Procedure Act (but in the Administrative Process Act). According to German administrative procedure and process law these indications are not an integral part of the notice (including the decision). In consequence a lack of this indication does not affect the lawfulness of the notice – it only extends the time limits for reviewing the decision (from one month to one year, Section 58 Para 2 Administrative Process Act).

One might take this observation for another imperfect regulation – though in practice private persons come to appeals at last.

(3)
A third set of regulations takes note of the ongoing procedure

a)
Annulment of administrative acts

Sections 48 and 49 VwVfG set up detailed rules either on legal (Section 49) or illegal (Article 48) administrative acts, including provisions for retroactive decisions taking into account well acquired rights and legitimate expectations. They go far beyond the short regulations of Article 21 Code for good administration, which at least takes into account the rights and interests of private persons.

Article 47 Para 1 EU Charter only refers to judicial review.

But it must not be neglected that the Court of the European Union has adopted quite different legal principles in order to handle the annulment of administrative acts serving as legal grounds for EU subsidies. As EU law is executed by the member states' administration applying member states' legislation this leads to different procedures and decisions. Especially the standards in respect of annulment of administrative acts may cause the German legal practice to think over their conclusions and solutions in the field of weighing public and private interests (source: Court of Justice of the European Communities judgements Deufil, Alcan et al.)

b)
Internal legal protection normally is provided by the above mentioned Widerspruchsverfahren. Section 79 (with reference to Section 68 ff. of the Administrative Process Act) opens an internal administrative review of the administrative act (although some fields of administrative practice are excluded, e.g. internal and external security).

This internal protest procedure enables the administration itself to monitor the procedure and to supervise the decision thus serving as an additional guarantee of the above analysed administrative procedure principles.

Article 22 Para 2 of the Code of Good administration provides this procedure in general wording.

(4)
Finally there is another set of principles serving either as rights of the citizens (private persons) or obligations for the administration, which are laid down in other laws, codes or acts.

a)
Compensation for “damages through unlawful administrative decisions or negligence on the part of the administration or its officials” (Article 23 Para 1 Code of good administration) in German administrative law this right is taken from the constitution directly.

Article 34 Basic Law (Grundgesetz) in accordance with Section. 839 Civil Code (BGB) was developed by jurisprudence and has been completed by detail regulation in the civil service codes for the staff under public law.

There is no need to worry about the standards, even if the legal landscape is rather scattered. An attempt to unify these regulations by drafting a comprehensive act failed years ago by decision of the constitutional court (in German: Bundesverfassungsgericht) – it was against the division of competences in German federalism.

The standards meet the demands of European Community Law.

Article 44 Para 3 EU Charter only refers to activities of the EU officials.

More interesting may be the jurisprudence stemming from the non-transformation of directives. The Francovich decision surely changed the liability of the state (including the administration). I can assume the details are known- and they should, because Germany is a lazy transformer of EC directives.

b)

Equality and impartiality are granted in full range.

Any private person can plead that his fundamental right is respected: Article 3 GG (Basic Law).

The German legislator considered these provisions to be sufficient to grant legal protection – and the experience of 50 years of judgements by the German constitutional court proofs that he was right.

A set of legal provisions (civil service codes for the officials under pubic law and jurisprudence for contractors under labour law) completes the full range legal system with details for personal liability.

This is a wide field of rules and judgements, too.

Some of the most relevant are fixed in the Administrative Procedure Act again when setting up detailed rules on relations between the official to handle the case and the private person who might cause, endanger or at least presume any fear of affected interests, Sections 20 and 21 Administrative Procedure Act. As this is a personal subject the official is generally obliged to put the case to the superior level.

c)
Proportionality and retroactive decisions have to be executed in accordance with the principles of rule of law (The Rechtsstaat - principle), as settled in Article 20 GG (Basic Law) which no legislator ever can alter or abolish – its eternal validity is guaranteed by Article 79 Para 3 GG - basic law.

(5)
This rather wide-range but still rather rough study showed that, as far as the regulations of the Administrative Procedure Act and its accompanying legislation reach, the overall principle of lawfulness is well respected.

So, is there no need to worry?

6.

But these principles of good administration may be put at risk by recent tendencies.
I will only name two of them – chosen by chance; which brought to my knowledge two rather recent disturbing events:

- The overall goal of efficiency at any price – bringing with it a cut of costs and expenditure by risking a loss of quality administration as shown by the abolition of the internal protest procedure

- The tendency to produce too detailed regulations and too technical phrasings which may no longer be understood either by the addressees (the private persons, citizens, customers) or even by the applicants (the staff members of the administrative authorities)

Both of them may affect the standard of GOOD ADMINISTRATION as achieved in the previously revised section of the Administrative Procedure Act.

Both of them are subject to the Code of good administration, Article 11 and 17.

7.

Let us take a closer look at the internal protest procedure first (Widerspruchsverfahren).

What is the intention of that internal protest procedure?

Concurrently and unanimously the intention of the procedure comprises three different aspects:

It serves as
- an instrument of self control of the administration
- an internal legal protection of the private person's (the client's / citizen's) position and thus as an additional control according to the principle of subsidiarity
- an exoneration to the administrative courts

In the eyes of most of the observers from the jurisdiction or scholars these three objectives were achieved in the past (source: Report of the President of the VGH of Lower Saxony) and will continue to do so in the future, too.

The internal protest procedure does good work because:

It enables the administration to control their procedure and decision not only according to law but also according to means of discretion. The authority deciding on the protest of the client (citizen) will have to take into account not only principles of lawfulness but also of usefulness (practicability, advisability) according to rules / principles of discretion.

The protest procedure provides a second look upon the case in its entire legal and practical impact and by that improves quality of administration. Furthermore it serves as an incentive to the lower level authorities to improve their decision and make it of good quality. Secondly it can serve as an instrument of internal administrative control while decisions not redressed have to be forwarded to the next level of hierarchy. At last it helps to brush up the image of the administration by avoiding cases to be taken to the "forum externum" (i. c. the administrative courts - and by that way to the public). Overall it will contribute to cost reduction by avoiding costs arising from claims to the courts.

However, you might say that these procedures are time consuming. But this is a double-tongue-argument.

In reality the internal protest procedure can be handled much quicker than a case at the notoriously overburdened administrative courts.

Furthermore you might argue that the total costs were higher every time the administrative authorities of both levels did not redress, because internal cost will have to be added to the costs of the claim.

But this argument does not stand critical scrutiny either.

If a protest procedure is handled correctly, meaning that it will take into account the same aspects as the court decision later on (and additionally aspects of discretion) a private person will obtain his rights (not only faster but

also) by spending less costs.

The assertion that private persons obtain their rights more rapidly (as expressed in the above quoted press item) is only justifiable if both the internal administrative protest procedure is useless and unlawful. Neither one of the preconditions is right.

The general objective of the Second Act on Reduction of Bureaucracy to save money might fail, too.

We know by the words of the Deputy Minister of the Interior (Staatssekretär Palmen interview Kölner Sadt-Anzeiger 1 November 2007) that the consultation and the hearings shall be intensified. At the same time the review of the decision shall be extended even if there is no longer a formal right to such an internal protest procedure. This may raise the personal costs. Recently press reported that North Rhine-Westphalia's most populated city (Cologne) already asked for additional staff to intensify the first instance procedure of legal consulting of private persons.

Nevertheless if local governments in North Rhine-Westphalia are advised to consult private persons more intensively they fear the effect of not being able to correct errors anymore (which previously were repaired during the internal protest procedure) and hence become more cautious.

This leads to an extension of procedures and heavier burdens on the decision makers.

8.

Two examples cast light on the usefulness of the internal protest procedure:

(1)
Section 45 Para 1 (VwVfG) of the Administrative Procedure Act states that the administrative authorities correct errors made during the procedure by not hearing citizens before making a decision which may affect their rights or interests if they consider the request for an internal review and take notice of the factual or legal arguments not necessarily taking them into account.

The internal protest procedure thus serves as the ideal instrument to ensure a correct hearing. This procedure may correct mistakes made in an earlier state of the administrative procedure – but only by protest of the private person. If he does not mind the decision it will enter into force and will become non-appealable (in German: bestandskräftig).

If he disagrees he will lodge a protest. This is normally done when the client appeals for a decision in the protest procedure; he then presents his view of the case, the factual and legal arguments in order to obtain a different decision. If the administrative authority deals with his arguments (but not necessarily agreeing to him) they repair this fault internally. The previously false procedure and logically wrong decision is also corrected – without taking the case to the administrative court.

Other errors made during the procedure (a lack or shortfall of giving grounds for the decisions etc.) may be corrected in the same way – effectively and efficiently.

(2)
The option of using discretional decisions is the second advantage.

For constitutional reasons – precisely the division of powers - the courts are not allowed to take into account other grounds than strict legal ones. Discretional decisions – with their immense impact on flexibility, modern administration and friendly attitude towards the citizen (in German we call it Bürgerfreundlichkeit) – can no longer be corrected within the administrative body.

Abolishing the internal protest procedure will affect even the factual position of the private person and his - not specifically legal - arguments supporting his protest (internal review).

9.

Having examined the impacts of abolishment of the internal protest procedure on the application of administrative law and administrative practice, we turn our attention back to the recommendation on good administration and the appendix – the model code:

Article 22 of the model code states that in principle these procedures shall be possible.

Indeed Bavaria and Lower Saxony, two other large and rather populated Länder, started before with a campaign to examine the usefulness of such procedures. But while Bavaria is said to have stopped the drafting of legislation with these objectives and Lower Saxony only regulated some fields of administrative cases North Rhine-Westphalia has become the first Bundesland to abolish the internal review in general. That has to be considered a decisive (crucial) step ahead; because the abolition became the principle with only few exceptions.

Even when respecting that this bill contains a five-year sunset-clause, the bill should be submitted to an evaluation today rather than in 2012. The danger to fundamental principles and standards of good administration and quality of legal acts cannot be neglected.

According to the Recommendation on Good Administration, North Rhine-Westphalia should not exclude an internal review, in general. That Bundesland should therefore carefully take into account the shortcomings of the legal protection. The Federal Republic of Germany as member State of the Council of Europe has to ensure that the regional and local government adopt the same standards and may not fall behind.

This is the first serious shortcoming.

10.

The other danger comes from the possible shortfalls in plain language. Some wording going along with the idea of modern administration may unfortunately be mistaken A case brought to my knowledge recently may illustrate this.

Section 22 VwVfG of the Administrative Procedure Act expresses in a rather complicated way the factors determining the opening of any administrative procedure.

Section. 22 VwVfG starts with the statement that the administrative authority decides by discretion if it opens a procedure or if it does not so. The second sentence continues that this is not the case if the administrative body has to act “ex officio” or by request (forwarded to the administrative authority) or in case no appeal is made and the authority shall not open the procedure but for such an appeal.

Many years of practising administrative procedure openings convinced me that this regulation is of legal containment, surely meeting the demands of lawfulness – but is still far away from being perfectly coined under the aspect of plain language.

In detail: Why start with the exceptional case – suggesting that this were the regular one and why hide the most important case (opening an administrative procedure by request of a private person) by pretending that this might be the exception. So let us express it clearly: Whenever a private person (a citizen) forwards an appeal or a request it is self-evident that the administration has to open a procedure!

Of course, those legal experts having studied law for years and practised public administration and getting used to such kinds of law will at least not fail to find the way through this labyrinth at least at last. But is law not also written for the addressees? Should it not be “easily understood”?

The following case study shows that it is not easily understood – even not by the administrative staff:

A German citizen migrated from Russia or Kazakhstan to Germany years ago – but still without perfect knowledge of German language - asked for reimbursement for costs of schoolbooks. He formulated a request by explaining the factual grounds and attached the original bill. The local authority’s staff member answered him by

stating that there was no right to get reimbursed by this specific municipality, because the neighbouring town's local administrative authority was competent: the reason for this was that the school was run by that town. He sent back the request including the attached bill. After having consulted his lawyer, who then wrote a letter to the local administration, the citizen received an informal letter outlining that through lack of legal grounds no notice was issued – the entire administrative procedure was only an informal administrative action. Therefore there was no way to ask for a decision or to put a request or any appeal to the local administration – NB meaning that there was not even a way to go to the administrative court – although that was not even expressed at all.

Furthermore: his case was not forwarded to the competent authority, against Article 13 Para 3 model Code of good administration.

The situation is not taken from a novel by Franz Kafka – nor is the town called Schilda (our German fairy tale village with notoriously absurd and wrongful administrative practice).

I will not even deny that the staff members are of good will.

It is mostly a shortfall of clarity. And legal provisions of such imperfect wording endanger the application of administrative procedure law.

The handling of such cases can be improved by implementing clear legislation along the guideline of Article 13 of the model code on good administration.

Any member state should at least revise his administrative legislation, his administrative acts and any given informal contacts with private persons to commit to these recommendations.

This is a serious second shortcoming: effective and efficient protection of rights is indispensable.

11.

But there is even more potential progress and improvement to be taken from the recommendation (especially the model code on good administration).

Let me give two more impulses:

(1)
The principles previously examined as set 2 of the administrative principles refer to administrative acts only. Other forms of administrative action and decision are not expressly mentioned.

Why not require certainty, statement of reasons, discretion and publication (notification) for other actions, too? It may well be useful to enforce standards of the same kind even for regulations of the same kind for all administrative procedures and the output acts. The model code on good administration may provide a guideline – especially as it does not distinguish between forms of decisions.

(2)
The administrative principle of ongoing procedures (set 3 of the principles of the VwVfG) does not include strict time frames.

We have principles of rapid, fast or quick decision making in Germany, too – of course. Section 10 VwVfG expresses this rather clearly: procedures shall be made in a simple, sensible and quick manner.

In procedure and process law we call this principle the concentration maxim.

But up to now legislation and jurisdiction in Germany hesitate to express clearly and without exemption the principles of time frames by giving strict dates.

Article 7 of the code of good administration recommends that "public authorities shall act and perform their duties within a reasonable time"; Article 13 Para 2 states the same standards for decisions in response to requests.

This is not a clear time limit – but it may encourage member states to set up time frames.

At least by applying European law Germany has experienced strict time frames. European Community directives have to be transformed following certain time schedules and deadlines. You may all know that Germany is a slow transformer of such legislation – put the blame somewhat on our complicated federal system. But once inside this Troyan horse, we began to get used to time frames – although we still suffer.

I might give you an example taken from my own professional experience.

As chairman of an examining board on the approval of a European law diploma, I suffered from an explicit provision that the examination had to be finished within 4 months – which is extremely short according to German standards and the necessary co-operation between the Länder and the Federation and within the Federation between the different levels of administration.

Setting up time frames implies that strict control mechanisms are implemented, preferably by the national courts.

12. Conclusions

(1) The administrative procedure principles as set up in the administrative procedure act (VwVfG) commit to the idea of good administration and comply with the recommendation in general. In some fields they even surpass the standards of the recommendation.

(2) Some administrative procedure principles are only guaranteed for certain kinds of decisions, such as administrative acts. Consideration should be given to extending the guarantee of these principles to all procedures and decision making procedures.

(3) The too detailed and technical phrasing of rules and regulations endangers the objective of clarity and the principle that legal provisions shall be easily understood by the staff applying law, as well as by the private person whose rights and interest are affected. The recommendation by its plain language may support useful rephrasing attempts.

(4) The internal protest procedure is an excellent instrument for monitoring the procedure and for reviewing the decision by factual and legal grounds including aspects of discretional acting. Abolishing this internal review endangers the objective of good administration. According to good administration principles administrative appeals prior to judicial review shall be possible.

(5) Time frames may be considered in certain fields of administrative procedures. They are not alien to national administration as for the transformation of European community law even strict time limits are familiar to the legislator and administrative authorities.

(6) The recommendation on good administration is a sensible instrument to improve quality administration even in Council of Europe member States with long and outstanding administrative culture and traditions. The model code contains comprehensive provisions for the drafting of member States' legislation while keeping flexibility to include the different administrative models.

(7) Even if the right to good administration is regarded as a right of the third generation, these elements gain the status of individuals rights as far as they are fixed in procedural rights of the member states' acts and codes on administration. Nevertheless the model code on good administration can support by allowing interpretation.

(8) Along with the recommendation Article 41 of the Charter of Fundamental Rights of the European Union (2000) which will become validity for affairs handled by EU institutions and bodies the member states shall receive impulses to adopt appropriate legislation and to improve their application.

(9) European community law can influence national law by modifying national legal provisions more easily than a recommendation. Therefore coherence is important.

(10) Good administration means a permanent effort on the part of administrative authorities and their staff. If detailed binding (compulsory) law is enacted and protection of individual rights is guaranteed by the states these principles may not be indispensable; but even for such administrations, the right to good administration inspires and helps tune these instruments again and again.