

Flawed Administration through the Lens of Free Access to Public Information

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Abstract

This paper conducts an analysis of the concept of "good administration" in contrast to the concept of "flawed administration", with both concepts being examined through the lens of free access to public information. Issues related to access to public information are often timely and can have a significant impact on society and political processes. Therefore, research in this field can be particularly relevant and can capture public attention. Transparent and responsible public administration is essential for good governance. This theme can contribute to identifying issues of flawed administration in the domain of public information communication and can provide solutions for enhancing governmental transparency. The uniqueness of the theme lies in its multifaceted approach, including transparency and administrative responsibility, legislation concerning access to public information, as well as the use of specific case studies to illustrate issues related to this topic. Thus, in this article, we will present several pertinent cases from judicial practice that illustrate how flawed administration is often linked to the denial or restriction of access to public information.

Keywords: good governance, defective administration, public information, free access, public interest, citizen.

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1. Introduction

The choice of this topic is determined by the need to identify relevant jurisprudence for defining the concept of „flawed administration”, given the absence of a legal definition of this concept.

The right to good administration represents a fundamental requirement in the administrative sphere, playing a crucial role in ensuring justice and fairness in the relationship between citizens and authorities².

This concept is not limited to a set of rules but represents a comprehensive approach to public administration, which has a dual dimension: on one hand, it is a right and a guarantee for citizens against administrative arbitrariness, and on the other hand, it is a standard, an obligation, and a mechanism to make administrative actions responsible.

Good administration implies good administrative conduct.

The elements defining good administrative conduct are part of the concept of the „administrative phenomenon” since the quality of administrative decisions and performance depends on the behavior of personnel in public administration³.

In this article, we aim to establish what the concept of "good administration" encompasses, as

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² See in this regard Cătălin-Silviu Săraru, *Drept administrativ. Curs universitar*, vol. I, Ed. Universul Juridic, Bucharest, 2023, p. 18-21.

³ Alina Livia Nicu, *Codul European de bună conduită administrativă și fenomenul administrativ românesc*, EIRP Proceedings, vol. I, „Danubius” University of Galați, 2006. The document is available online at the following address <https://proceedings.univ-danubius.ro/index.php/eirp/article/view/1145>, with the last access date being 06.11.2023; Cătălin-Silviu Săraru, *Drept administrativ. Probleme fundamentale ale dreptului public*, Ed. C.H. Beck, Bucharest, 2016, p. 27.

well as its opposite concept, "flawed administration."

We will then examine an aspect of good administration, namely, free access to public information, and evoke some cases of flawed administration in the context of the mentioned aspect, taken from judicial practice.

2. Notions of good administration and flawed administration

Good administration can be described as an umbrella term because it encompasses the general principle of good administration, covering a wide range of aspects, from transparency and responsibility to efficiency and equity⁴.

This principle serves as a guide for the actions of administration and ensures the respect of the rights and interests of citizens.

Additionally, the right to good administration is an open concept that adapts to changes and developments in society, ensuring that its principles remain relevant and applicable in an ever-changing environment.

Article 41 of the Charter of Fundamental Rights of the European Union enshrines the right to good administration, providing that every person has the right to receive impartial, fair, and timely treatment by the institutions, bodies, offices, and agencies of the Union concerning their matters.

This right primarily includes the right of any person to be heard before the adoption of any individual measure that may affect them, the right of any person to access their own file, respecting legitimate interests related to confidentiality and professional and commercial secrecy, and the obligation of the administration to justify its decisions.

Furthermore, every person has the right to compensation for damage caused by the institutions or agencies of the Union in the exercise of their functions, in accordance with the common general principles of the laws of the Member States.

Furthermore, each person may address the Union's institutions in writing in one of the treaty languages and must receive a response in the same language.

Article 41 combines a series of rights and obligations under a general umbrella.

The reasons for choosing these rather than others seem to respond to a more pragmatic logic than a normative one⁵.

Good administration is an essential concept in European administrative law, with a dual dimension, as it is both a fundamental right and a general principle of good governance.

It reflects a commitment to responsible and just public administration, serving the public interest while respecting individual rights and interests simultaneously.

Good administration is particularly important in building and maintaining citizens' trust because it directly impacts the improvement of citizens' quality of life⁶.

In contrast to the concept of „good administration”, the concept of „flawed administration” refers to the situation in which a public body does not act in accordance with a rule or principle that is mandatory for it.

This implies that the actions or decisions of the administration contravene legal norms or established standards of good administration, thereby leading to the violation of citizens' rights or the rules prescribed by the law.

This deficiency can have negative consequences on the relationship between the administration and citizens, affecting the principles of transparency, legality, fairness, and accountability within public administration.

⁴ See about the principles of good administration at the European level Cătălin-Silviu Săraru, *European Administrative Space - recent challenges and evolution prospects*, ADJURIS – International Academic Publisher, Bucharest, 2017, p. 110-129.

⁵ Joana Mendes, *La bonne administration en droit communautaire et le code européen de bonne conduite administrative*, „Revue française d'administration publique” 2009/3 (n° 131), Editeur Institut national du service public, p. 555-571.

⁶ Mirlinda Batalli, *Principles of Good Administration under the European Cod of Good Administrative Behavior*, „Pécs Journal of International and European Law”, 2018/1, Publisher University Pécs, Hungary, pp. 26-35. The document is available online at the following address https://www.researchgate.net/publication/327394391_Principles_of_Good_Administration_under_the_European_Code_of_Good_Administrative_Behavior, with the last access date being 06.11.2023.

Flawed public administration can be broadly defined as „administrative actions or inactions resulting from improper considerations or conduct”. It encompasses all the characteristics of weak governance, such as injustice, failure to achieve legislative intent, unjustified delay, administrative error, negligence, inadequate investigations, incorrect policies, bias, arbitrariness, inefficiency, law or regulation violations, abuse of authority, discrimination, and other actions often imposed on the governed, intentionally or unintentionally, by those governing⁷.

Flawed administration can lead to the violation of citizens' rights, or the rules prescribed by the law.

This can significantly impact the lives and individual interests of citizens, potentially restricting or infringing upon them.

When administration acts improperly, it can lead to a decrease in citizens' trust in public institutions.

Good administration is an essential pillar of democracy, characterized by transparency, accountability, and the efficient delivery of public services.

In contrast, flawed administration presents significant challenges to the functioning of government institutions.

To address these challenges effectively, it is crucial to have a clear and comprehensive definition of this concept.

3. Free access to public information and flawed administration

3.1. The notion of free access to public information. Access to public information is a cornerstone of any democratic and transparent society

It represents a fundamental right of citizens to obtain information about the activities and decisions of authorities and public institutions.

The principle of "free access to public information" is essential for ensuring governmental accountability and curbing potential abuses and corruption. Free access to public information is a crucial aspect of open governance that promotes transparency and accountability within public administration.

By providing citizens and civil society with the opportunity to access information about the decisions and actions of authorities, a climate of democratic oversight over power is created.

This encourages leaders to act in the public interest and avoid arbitrary or corrupt behavior.

Free access to public information is recognized as a fundamental right in many democratic countries.

It brings several significant benefits to society in that it encourages government officials to be responsive to citizens and to justify their decisions and actions.

It also allows the identification and prevention of acts of corruption in the public sector, as well-informed citizens have a solid foundation for making informed decisions and participating in political processes.

Transparency and access to information increase the trust of citizens in government authorities and institutions.

Additionally, access to information can help identify inefficiencies and improve government processes.

However, it is important to strike a balance between the right to free access to information and other values, such as the protection of personal data and national security. In this regard, specific legislation on access to public information must include provisions that ensure the protection of sensitive information and personal data.

Free access to public information is a pillar of democracy and government accountability.

⁷ Sonny S. H. Lo, *Public Maladministration and Bureaucratic Corruption*, in Teather D.C.B., Yee, H.S., Campling, J. (eds.) *China in Transition*. Palgrave Macmillan, London, 1999, pp. 47-48. https://doi.org/10.1057/9780333983829_3, with the last access date being 06.11.2023.

To create a better relationship between the administration and citizens and to regain the trust of the latter in state institutions, it is recommended to make all public information that must be disclosed available to citizens on the websites of authorities or public institutions for easier consultation by citizens and to increase the level of transparency of institutional activities⁸.

By promoting transparency and ensuring that citizens have access to relevant information, a fairer and more efficient society is created⁹.

However, it is important to find a balance between access to information and other values and interests related to security and the protection of personal data. In an increasingly connected world, the right to free access to public information remains an essential tool for strengthening democracy and promoting government accountability.

3.2. The legal framework regarding free access to public information

Article 41, paragraph 2, letter b) of the Charter of Fundamental Rights of the European Union provides that „the right to good administration also includes the right of every person to access his or her file, while respecting the legitimate interests concerning confidentiality and professional and commercial secrecy”¹⁰.

Article 2, paragraph 1 of Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council, and Commission documents states that „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, subject to the principles, conditions, and limits defined by this Regulation”¹¹.

Paragraph 2 of the same article provides that „the institutions may, subject to the same principles, conditions, and limits, grant access to documents to any natural or legal person not residing or having its registered office in a Member State”.

Paragraph 3 of the same article outlines the scope of the Regulation, encompassing all documents held by an institution, i.e., those drawn up or received by the institution and in its possession, in all fields of activity of the European Union.

The Romanian legislator has adopted Law No. 544/2001 regarding free access to public information¹².

Article 2, letter b) of the Law defines „publicly available information” as „any information concerning the activities or resulting from the activities of a public authority or public institution, regardless of the medium, form, or manner of expression of the information”.

Article 5 establishes the publicly available information that each public authority or institution is obligated to proactively disclose, including the legislative acts regulating the organization and functioning of the authority or public institution, organizational structure, departmental responsibilities, working hours, public audience schedule, names of individuals in the leadership of the authority or public institution, and the official responsible for disseminating public information. It also includes contact details of the authority or public institution, such as name, address, phone numbers, fax, email address, and website.

Furthermore, the law covers financial sources, budget, balance sheet, the institution's own

⁸ Ana Elena Ranta, *Accesul la informațiile de interes public - obligație legală în sarcina autorităților administrației publice. Studiu de caz privind gradul de accesibilitate al informațiilor de interes public comunicate din oficiu*, „Revista Transilvană de Științe Administrative”, 2 (35) 2014, „Babeș - Bolyai” University of Cluj - Napoca, pp. 98-113.

⁹ See for some particular details Connie Chang, *Improving Access to Free Online Legal Information Through Universal Design: User Personas, User Journeys, a Proposal, and a Prototype*, „Legal Reference Services Quarterly”, 40:4, 2021, pp. 199-281, DOI: 10.1080/0270319X.2021.2003686.

¹⁰ The Charter of Fundamental Rights of the European Union was published in the Official Journal of the European Union on 26.10.2012, with the document number (2012/C 326/02).

¹¹ The Regulation (EC) No. 1049/2001 of the European Parliament and of the Council dated May 30, 2001, regarding public access to European Parliament, Council, and Commission documents was published in the Official Journal of the European Union on May 31, 2001, as L 145/43, 32001R1049.

¹² Law No. 544/2001 on free access to public information was published in the Official Gazette of Romania No. 663 on October 23, 2001.

programs and strategies, the list of public documents, the list of document categories produced and/or managed according to the law, and the methods for contesting the decision of the authority or public institution if the person feels harmed regarding the right to access the requested public information.

This legislative act recognizes the right of any individual to request and obtain public information from public authorities and institutions.¹³

Article 6, paragraph 1 of the same legislative act states that „any person has the right to request and obtain from public authorities and institutions, under the conditions of this law, publicly available information, the request can be made in writing or verbally”.

Concerning requests for public information, public authorities and institutions are obliged to respond in writing within 10 days or, if necessary, within a maximum of 30 days from the registration of the request, depending on the difficulty, complexity, volume of documentary work, and urgency of the request.

If the time required to identify and disseminate the requested information exceeds 10 days, the response will be communicated to the requester within a maximum of 30 days, provided the requester is notified in writing about this within 10 days.

In case of refusal to disclose the requested public information, any interested person can file a complaint with the head of the public institution within 30 days from the moment of becoming aware of the refusal.

Moreover, a complaint can be submitted to the administrative litigation section of the tribunal within whose territorial jurisdiction the plaintiff resides or where the headquarters of the public institution is located, within 30 days from the moment the refusal is known.

If the complaint is found valid, the court will compel the public institution to provide the requested public information and to pay moral and/or pecuniary damages.

3.3. Jurisprudential aspects regarding free access to public information

A) The case study to be presented highlights that any information concerning the activities or resulting from the activities of a public authority or public institution, regardless of the person or authority from which it originates or that issued these documents, can be the subject of a request based on the provisions of Law No. 544/2001.

The current lawsuit began with a lawsuit filed by the plaintiff C.I., who sued the defendant U.A.T. B. and the Mayor of the city of B. in order for the court's decision to obligate the defendants to provide him with the requested public information under Law No. 544/2001, namely the report of the Court of Auditors following the audit conducted at U.A.T. B. in September-October 2021, the finding report prepared by the Court of Auditors after the audit conducted in September-October 2021, and the decision of the Court of Auditors following the audit in September-October 2021.

In the reasoning, the plaintiff stated that he had registered a request with the defendant's unit, requesting public information and documents related to documents prepared by the Court of Auditors. Subsequently, he received a letter from the B.

City Hall by post, informing him that the communication of information was refused on the grounds that it falls under the provisions of Law No. 94/1992 and is in the exploitation phase, without explaining and specifying that the requested information falls into the category of restricted information from public access as provided by Article 12 of Law No. 544/2001, or justifying the response under Article 7, paragraph 2 of the same legislative act.

By explicitly refusing to provide him with public information, the plaintiff considered that his right to free access to public information, as provided by Law No. 544/2001, as well as the right to information provided by Article 31, paragraphs 1 and 2 of the Romanian Constitution, were violated.

Faced with the refusal to provide the requested information, the plaintiff filed a legal action, invoking the provisions of Law No. 544/2001 and the Methodological Norms of application approved

¹³ For a perspective at european level, see Michael Blakemore & Max Craglia, *Access to Public-Sector Information in Europe: Policy, Rights, and Obligations*, „The Information Society”, 22:1, 2006, pp. 13-24, DOI: 10.1080/01972240500388180.

by Government Decision No. 123/2002, the Romanian Constitution, Law No. 7/2004, Government Emergency Ordinance No. 57/2019, and Law No. 554/2004.

The first-instance court rejected the lawsuit as unfounded¹⁴ with the reasoning that „there is no identity between the local authorities, the defendants, and the public authority that issued the documents requested by the plaintiff in a copy certified to the original. As the defendants are not the issuers of the documents requested by the plaintiff, they are not to be blamed for an unjustified refusal to provide the plaintiff with the requested documents in a copy certified to the original. The original documents requested by the plaintiff in a copy certified to the original are found in the records of the issuing authority, namely the Court of Auditors of Romania, so they can only be requested from the issuer of these documents. The plaintiff did not provide proof that the defendants in the present case also own the original documents.”

Against this judgment, the plaintiff filed an appeal, and the superior court admitted the appeal, quashed the appealed judgment and, upon retrial, dismissed the lawsuit as having become devoid of purpose¹⁵.

To pronounce this solution, the hierarchical court held that „the trial court considered that there is no identity between the local authorities who are defendants and the public authority that issued the documents requested by the plaintiff, given that the defendants are not the issuers of the documents requested by the plaintiff. However, from the definition given in Article 2, letter b) of Law 544/2001, it follows that any information related to the activities or resulting from the activities of a public authority or public institution can be the subject of a request based on the provisions of this law, regardless of the person or authority from which it originates or that issued these documents. Therefore, even if the documents requested by the plaintiff are issued by the Court of Audit, they can be the subject of a request addressed to the Mayor of City B, as they concern the activity at the level of U.A.T. B. On the other hand, the defendant authority did not mention in the response to the plaintiff the fact that they do not possess the original documents and, therefore, cannot certify them as original”.

The decision to reject the lawsuit as moot was based on the fact that „the documents requested by the plaintiff were submitted by the defendant unit to the first instance case file”.

B) In the next case study, the court concluded that the information requested by the plaintiff is public information, and this information falls within the very broad definition provided by Article 2, letter b) of Law No. 544/2001 for public interest information and does not belong to the category of exceptions to public access expressly and restrictively provided for by Article 12 of Law No. 544/2001, so they should have been communicated to the plaintiff.

The dispute began with the lawsuit filed by the plaintiff C. I. who sued the defendants U.A.T. City B. and the Mayor of City B., requesting that the defendants be obliged to provide him with the public interest information requested in a prior request registered at the City B. City Hall, namely the Council's Resolutions approved in the meeting on February 24, 2022, the draft resolutions for all the resolutions of February 24, 2022, the explanations, specialized reports, approval reports, legality opinions prepared by the general secretary for each project, reports from all the Council's specialized committees for each project, the minutes regarding the vote of each councillor, given for each project, all the documents in the meeting file of February 24, 2022 (summoning order, summons, minutes of display, minutes of public debate on the draft resolutions, the agenda for each project with the required legal documentation, etc.), the announcements for public debates prepared for each draft resolution, and the mandatory documents to be prepared according to Article 7, paragraphs 1 and 2 of Law No. 52/2003.

In the justification, the plaintiff stated that he submitted a request to U.A.T. City B. requesting

¹⁴ Judgment No. 642/02.06.2022, pronounced by the Vâlcea Court, Section II Civil and Administrative Litigation and Fiscal, published on the website 'rejust.ro', available online at the address <https://www.rejust.ro/intern/g88d82376>, with the last access date being November 6, 2023.

¹⁵ Decision No. 252/R-CONT/23.02.2023 pronounced by the Court of Appeal Pitești, Section II Civil, Administrative, and Fiscal Litigation, published on the website 'rejust.ro', available online at the address https://www.rejust.ro/intern/8645e736d?highlight_phrase=legea%20544/2001, with the last access date being November 6, 2023.

public interest information and documents under Law No. 544/2001, and the City Hall of B. explicitly refused to communicate the requested information via email, citing the reason that there was no quorum at the meeting on February 24, 2022, and no resolution was adopted.

Regarding the refusal to communicate the requested information, the plaintiff filed a lawsuit, invoking the provisions of Law No. 544/2001, the Methodological Norms for its application approved by Government Decision No. 123/2002, the Constitution of Romania, Law No. 52/2003, Law No. 554/2004 (republished), Government Emergency Ordinance No. 57/2019.

The court accepted the plaintiff's lawsuit and ordered the defendants to provide the requested information to the plaintiff within 30 days from the final date of the judgment, and to resolve the administrative complaint filed by the plaintiff against the person responsible for providing public interest information¹⁶.

To pronounce this solution, the court held that „the information requested by the plaintiff is public interest information, and these pieces of information fall within the very broad definition provided by the provisions of Article 2, letter b) of Law No. 544/2001 for public interest information and do not belong to the category of exceptions to public access expressly and restrictively provided for by Article 12 of Law No. 544/2001. Therefore, the plaintiff is entitled to have them communicated to him, with no evidence that they have been communicated. The court also notes that the plaintiff cannot prove the negative fact of non-communication, while the defendants could provide evidence of effective communication to the plaintiff, which they did not. In light of the above considerations, the court finds that the plaintiff's request is justified regarding the information requested in point 2 of the application. Additionally, since the defendants did not resolve the administrative complaint and did not invoke any reason for the delay, the court found the request to oblige the defendants to communicate to the plaintiff the method of resolving his administrative complaint to be justified”.

C) In the next case study, the court concluded that public counselors employed within the Administrative-Territorial Unit of Municipality B. Sector x hold a public office, representing the public institution in litigation and beyond, thus exercising, on behalf of the institution, the prerogatives of public power in order to satisfy a legitimate public interest.

Therefore, the information requested by the claimants constitutes public interest information, as it affects the ability to exercise the public function, in the sense that it allows for the verification of the quality of the legal counsellor holding the position and their ability to exercise the public function in accordance with the legal and statutory provisions specific to the position held, which is why such information can be communicated to the applicants, falling within the exception provided by Article 14, paragraph 1 of Law No. 544/2001, as interpreted by Decision No. 37/2015 issued by the High Court of Cassation and Justice.¹⁷

The dispute began with the lawsuit filed by the claimants, the Association C.S.D.C. and B.D., in contradiction with the defendant, Sector x Administrative-Territorial Unit of Municipality B., in which they requested the court to order, among other things, the defendant to fully, effectively, and punctually resolve the request for public interest information, with the consequence of obliging the communication of all the requested information in writing to both of them.

In the justification for the lawsuit, the claimants stated that they submitted a request for public interest information through the Romanian National Post, specifically the list of legal counsellors hired (appointed) by Sector x Administrative-Territorial Unit of Municipality B. and its subordinate structures (including the City Council and its subordinates) and the amounts paid as salaries (compensation, etc.) monthly from 2017 until the present. In the event that this list is communicated, the claimants requested to be provided with the names, surnames (including their specialization, the area of law they are experts in according to their position), as well as the registration and visa numbers

¹⁶ Judgment No. 713/21.06.2022, pronounced by the Vâlcea Court, Section II Civil and Administrative Litigation and Fiscal, published on the website 'rejust.ro', available online at the address <https://www.rejust.ro/intern/988385928>, with the last access date being November 6, 2023.

¹⁷ For a comparative view see Piotr Szwedo, *Global administrative law through the Polish lens: From practice to theory*, „International Journal of Constitutional Law”, Volume 13, Issue 1, January 2015, pp. 156–179, <https://doi.org/10.1093/icon/mov006>; Itai Bavli, *When Public Health Goes Wrong: Toward a New Concept of Public Health Error*, „Journal of Law, Medicine & Ethics” 51, no. 2 (2023): pp. 385–402, <https://doi.org/10.1017/jme.2023.67>.

allocated by the legal counsellor's board and on which board they are listed.

In response to the claimants' request, the defendant provided the following response: „Regarding point 1 of the petition, the number of legal counsellors employed in the structure of the Mayor's Office of Sector x from 2017 until now is as follows: 2017 18; 2018 23; 2019 21; 2020 20; 2021 19; 2022 19. We note that the Human Resources Department of the Mayor's Office of Sector x cannot provide information regarding the structures subordinate to the City Council of Sector x. Regarding point 2 of the petition, the requested information, such as the names, surnames, specialization, as well as the registration and visa numbers allocated by the legal counsellor's board, represent personal data and fall under the scope of Regulation No. 679 of April 27, 2016, regarding the protection of natural persons with regard to the processing of personal data and the free movement of such data, repealing Directive 95/46/EC (General Data Protection Regulation). Also, taking into account the provisions of Article 7, paragraph 1 of Law No. 544/2001 regarding free access to public interest information, with subsequent amendments and completions, the requested information falling within the scope of the General Economic Directorate's activity cannot be dispatched within the initial 10-day period, and you will receive it within 30 days from the date of your request's registration”.

The claimants believe that with regard to question no. 1, a partial response was provided, and with regard to question no. 2, the response was refused.

Therefore, they filed a lawsuit against the defendant, invoking, in terms of the law, the provisions of Article 1, Article 16, Article 30, 31, Article 51, and 52 of the Romanian Constitution, Law No. 554/2001, Government Decision No. 123/2002, and Government Ordinance No. 137/2000.

The first-instance court partially accepted the claimants' request and obligated the defendant to provide them with a complete response to the request for public interest information no. 208930/25.08.2022, with the exception of the information regarding legal counsellors in the City Council of Sector x¹⁸.

In the reasoning of the decision, it is stated that „the request of the claimants, except for the information regarding legal counsellors in the City Council of Sector X, falls within the definition of public interest information established by Article 2, letter b) of Law No. 544/2001, and the requested information arises from the defendant's institutional activities. Regarding the information about legal counsellors in the City Council of Sector x, the court notes that the defendant communicated to the claimants that it does not possess information about the structures subordinate to the City Council of Sector x. Therefore, since this information does not concern the activities of the defendant Sector x Administrative-Territorial Unit of Municipality B. and does not result from its activities, the defendant's response does not represent an unjustified refusal to provide information. Although they are personal data, the information requested in the application registered under no. 208930/25.08.2022 falls within the situation provided for by Article 14 of Law No. 544/2001, as these provisions were interpreted by Decision No. 37/2015 issued by the High Court of Cassation and Justice¹⁹. According to the provisions of Article 14, paragraph 1 of Law No. 544/2001, information regarding a citizen's personal data can become public interest information only to the extent that it affects the capacity to exercise a public function”.

The court further holds that „by Decision No. 37/2015 rendered by the High Court of Cassation and Justice, it was established that:

41. Therefore, personal data falls under the general notion of 'information' and, insofar as they concern activities related to or arising from the activities of a public authority or public institution, they are likely to be considered as information of public interest, within the meaning of Article 2(1)(b) of Law No. 544/2001.

42. However, in order to effectively fall into this category, an additional condition must be

¹⁸ Judgment No. 2506/03.05.2023, pronounced by the Bucharest Tribunal, Section II Administrative and Fiscal Litigation, published on the website 'rejust.ro', available online at the address <https://www.rejust.ro/intern/9896g4e48>, with the last access date being November 6, 2023.

¹⁹ The decision of the High Court of Cassation and Justice No. 37 of December 7, 2015, regarding the request for a preliminary ruling on the resolution of legal issues related to personal data (only the names and surnames) defined by Law No. 677/2001 and the refusal to release photocopies of documents with personal data even with the information anonymized (blacked out with a marker, acronymized), published in the Official Gazette of Romania No. 51 on January 25, 2016.

met, namely, that they affect the capacity to exercise a public function, as stated in Article 14(1) of Law No. 544/2001. Information regarding a citizen's personal data can become information of public interest only to the extent that it affects the capacity to exercise a public function.

43. In the absence of meeting this condition, personal data are exempted from the free access of citizens, in this regard, pursuant to the explicit provisions of Article 12(1) (a) of Law No. 544/2001, which state: The following information is exempt from the free access of citizens, as provided in Article 1 and Article 111, including: (...) d) information concerning personal data, as provided by law”.

Therefore, the court of administrative litigation must analyze whether the requested information affects the capacity to exercise a public function, specifically whether the names, surnames, specialization, and possible registration in a board of legal counsellors are directly related to the exercise of the public function held by these individuals within the defendant's public institution.

„According to Article 5, letter y of the Administrative Code, a 'public function' means the set of duties and responsibilities, established under the law, for the purpose of exercising the prerogatives of public power by public authorities and institutions. Therefore, the court finds that, given the provisions of Article 5, letter y of the Administrative Code, public counsellors employed within the Administrative-Territorial Unit of Municipality B. Sector x hold a public function, representing the public institution in litigation and beyond, exercising, on behalf of the institution, the prerogatives of public power to satisfy a legitimate public interest. In these circumstances, the information requested by the claimants constitutes public interest information, as it affects the capacity to exercise the public function, in the sense that it allows for the verification of the quality of the legal counsellor holding the position and their ability to exercise the public function in accordance with the legal and statutory provisions specific to the position held. Therefore, considering these considerations, the defendant's arguments, that the information is not of public interest because it concerns personal data (according to the provisions of Article 12, paragraph 1, letter d) of Law No. 544/2001), are unfounded, as they fall under the exception provided by Article 14, paragraph 1 of Law No. 544/2001, as these provisions were interpreted by Decision No. 37/2015 issued by the High Court of Cassation and Justice. The court also notes that even though the registration of the defendant's legal counsellors in a board of a professional association of legal counsellors does not represent information related to the defendant's activity, as it has no legal obligation to possess such specific information or to compile records/statistics with such information specific to the activity of a professional association, the defendant did not indicate in its response that it does not possess information regarding the registration/visa numbers allocated by a board of legal counsellors to its legal counsellors, but rather, it refused to provide this information. Therefore, to the extent that it possesses such information (regarding the registration/visa numbers allocated by a board of legal counsellors), the defendant can communicate it to the applicants, as the information falls under the exception provided by Article 14, paragraph 1 of Law No. 544/2001, as these provisions were interpreted by Decision No. 37/2015 issued by the High Court of Cassation and Justice”.

The case is currently under appeal in the Court of Appeal of B.

D) In the following case study, the court concluded that, to be considered of public interest, information must relate to the activities of, or result from the activities of, a public authority²⁰.

The information concerning the legal representation of the defendant institution in a lawsuit related to a strike initiated by the Transport Workers' Union of B., a dispute that concerns the defendant institution's activities, constitutes information that arises from the activities of a public authority.

The lawsuit began with a summons filed by the plaintiff, the Free Union of xxx SA, in opposition to the defendant, the Transport Company B. xxx SA.

In the summons, the plaintiff requested the defendant to provide the requested information,

²⁰ For more practical components see Peter Spáč, Petr Voda, Jozef Zagrapan, *Does the freedom of information law increase transparency at the local level? Evidence from a field experiment*, „Government Information Quarterly”, Volume 35, Issue 3, 2018, pp. 408-417.

which included the provision of an electronic copy of the contract/contracts for legal assistance concluded with the lawyers B. R. and C. C. for the legal assistance provided to xxx in case no. 1349/3/2022.

Additionally, the plaintiff asked the defendant to disclose the method of awarding this/these contract/contracts.

In the rationale of the action, the plaintiff stated that they had submitted a request under Law No. 544/2001, seeking the following public interest information:

1. Why were the interests of xxx represented (also) by the lawyers B. I. and C. C. in case no. xxxx/y/2022, which is pending in the Tribunal of B., when STB has dozens of legal counsellors on staff?

2. How much did the legal services provided by lawyers B. R. and C. C. cost in case no. xxxx/y/2022?

3. What was the method of awarding the legal assistance contract, and why was the offer not published in the SICAP system?

4. Is there an agreement from the main budget manager for the purchase of legal services, in accordance with Government Ordinance No. 26/2012, and if so, please provide the document in electronic format.

5. Provide an electronic copy of the contract/contracts for legal assistance concluded with lawyers B. R. and C. C.

The plaintiff received a response from the defendant, but it did not specify the method of awarding the legal assistance contract (silent refusal), and it refused to provide a copy of it, stating that it was confidential (express refusal).

The plaintiff believed that the contracts for legal assistance concluded with public institutions or authorities (as per the provisions of Law No. 544/2001) are not exempt from disclosure.

They also argued that the refusal to disclose the method of awarding the legal assistance contracts was not justified, and this information was of public interest, not exempt from disclosure.

In response to the defendant's refusal, the plaintiff filed a lawsuit based on the provisions of Law No. 544/2001.

A final judgment, uncontested on appeal, partially accepted the plaintiff's request and obliged the defendant to respond to the request for the disclosure of public information, with the anonymization of personal data²¹.

To reach this decision, the first-instance court noted „The scope and definition of the information considered of public interest and subject to the disclosure obligation under the legal provisions mentioned above can be derived from Article 2, letter b) of Law 544/2001, according to which public interest information is understood to mean any information related to the activities of, or resulting from the activities of, a public authority or public institution, regardless of the medium or form or manner of expression of the information. It can be inferred from this definition that, to be considered of public interest, the information must pertain to the activities of, or result from the activities of, a public authority. Therefore, information regarding the legal representation of the defendant in a lawsuit concerning a strike initiated by the Transport Workers' Union of Bucharest, a dispute that concerns the defendant institution's activities, constitutes information that results from the activities of a public authority. Regarding the defendant's defence that the requested information is confidential, the court notes that the legal texts invoked by the defendant in this regard, namely Article 69 and Article 118 of Decision No. 64/2011 on the legal profession status, do not regulate a prohibition on communicating the information requested by the plaintiff. Article 69 provides for the obligation of maintaining attorney-client privilege but not the confidentiality of the relationship between the lawyer and the client. Furthermore, Article 118 of the same regulatory act does not regulate the confidentiality of documents concluded between the lawyer and the client. At the same time, the court notes that Article 12 of Law No. 544/2001 lists exhaustively the information exempted

²¹ Judgment No. 3262/31.05.2023, pronounced by the Bucharest Tribunal, Section II Administrative and Fiscal Litigation, published on the website 'rejust.ro', available online at the address <https://www.rejust.ro/intern/59g5d3984>, with the last access date being November 6, 2023.

from citizens' free access, and the information in question is not among them. Therefore, given that only a partial response was provided to the plaintiff's requests, which concern public interest information, the Tribunal considers that the conditions of Article 22, paragraph 1 of Law No. 544/2001 are met, and since the request is well-founded in part, it will be accepted as such, obliging the defendant to respond to the plaintiff's request for the disclosure of public information registered under no. 204/15.11.2022, with the anonymization of personal data, in accordance with the provisions of Article 12, paragraph 1, point d of Law No. 544/2001".

4. Conclusions

Maladministration refers to a situation where a public body does not act in accordance with rules or principles that are binding upon it.

This indicates a violation of legal norms and standards of good administration that govern the functioning of the administration.

Correcting maladministration and restoring trust in the administration may require actions such as reviewing incorrect administrative decisions, sanctioning responsible officials, or revising rules and procedures to prevent such situations in the future.

In conclusion, maladministration represents a significant issue within public administration, with negative consequences for citizens, principles of governance, and the relationship between the administration and society.

It is important to take action to prevent and address such situations and to ensure compliance with legal norms and standards of good administration.

A clear definition of the concept of "maladministration" is an essential step in identifying and addressing issues related to good governance.

Such a definition can serve as a guide for developing policies and measures necessary to improve public administration and promote transparency and accountability in governance.

In the context of analyzing the concept of "maladministration," the approach through doctrine and jurisprudence plays a crucial role in the effort to clarify and deeply understand it.

Over time, these two sources have shed light on the complexity of maladministration and have provided appropriate solutions for transparent and responsible governance.

Doctrine²² and jurisprudence play an essential role in clarifying the concept of maladministration.

Through their contributions, these sources have laid the foundation for a clear definition of maladministration, emphasized the importance of transparency and accountability in administration, and provided guidance for addressing governance issues.

Thus, they represent vital tools in the effort to promote more efficient, transparent, and responsible governance.

On the other hand, it is essential to legislatively define the concept of "maladministration."

A legal definition can determine who is responsible for maladministration and what consequences can result from inappropriate behavior.

It can discourage inappropriate behavior and promote accountability in administration.

Once maladministration is clearly defined by law, corrective measures can be taken, and reforms can be implemented to address identified deficiencies.

At the same time, defining maladministration by law can provide citizens with a legal framework to defend their rights and access public interest information.

Bibliography

1. Batalli, Mirlinda, *Principles of Good Administration under the European Cod of Good Administrative Behavior*,

²² See Cătălin-Silviu Sărau, *Provocări contemporane în administrația publică și în dreptul administrativ*, in Constantin Brătianu, Doina Banciu, Nicolae Dănilă (coord.), *Economia și societatea în era digitalizării*, Publishing House of the Romanian Academy of Scientists, Bucharest, 2023, p. 241-260.

- „Pécs Journal of International and European Law”, 2018/1, Publisher University Pécs, Hungary, pp. 26-35. The document is available online at the following address https://www.researchgate.net/publication/327394391_Principles_of_Good_Administration_under_the_European_Code_of_Good_Administrative_Behavior.
2. Bavli, Itai, *When Public Health Goes Wrong: Toward a New Concept of Public Health Error*, „Journal of Law, Medicine & Ethics” 51, no. 2 (2023): pp. 385–402, <https://doi.org/10.1017/jme.2023.67>.
 3. Blakemore, Michael & Craglia, Max, *Access to Public-Sector Information in Europe: Policy, Rights, and Obligations*, „The Information Society”, 22:1, 2006, pp. 13-24, DOI: 10.1080/01972240500388180.
 4. Chang, Connie, *Improving Access to Free Online Legal Information Through Universal Design: User Personas, User Journeys, a Proposal, and a Prototype*, „Legal Reference Services Quarterly”, 40:4, 2021, pp. 199-281, DOI: 10.1080/0270319X.2021.2003686.
 5. Law No. 544/2001 on free access to public information was published in the Official Gazette of Romania No. 663 on October 23, 2001.
 6. Lo, Sonny S. H., *Public Maladministration and Bureaucratic Corruption*, in Teather D.C.B., Yee, H.S., Campling, J. (eds.) *China in Transition*. Palgrave Macmillan, London, 1999, pp. 47-48. https://doi.org/10.1057/9780333983829_3.
 7. Mendes, Joana, *La bonne administration en droit communautaire et le code européen de bonne conduite administrative*, „Revue française d'administration publique” 2009/3 (n° 131), Editeur Institut national du service public, p. 555-571.
 8. Nicu, Alina Livia, *Codul European de bună conduită administrativă și fenomenul administrativ românesc*, EIRP Proceedings, vol. I, „Danubius” University of Galați, 2006. The document is available online at the following address <https://proceedings.univ-danubius.ro/index.php/eirp/article/view/1145>.
 9. Ranta, Ana Elena, *Accesul la informațiile de interes public - obligație legală în sarcina autorităților administrației publice. Studiu de caz privind gradul de accesibilitate al informațiilor de interes public comunicate din oficiu*, „Revista Transilvană de Științe Administrative”, 2 (35) 2014, „Babeș - Bolyai” University of Cluj - Napoca, pp. 98-113.
 10. Săraru, Cătălin-Silviu, *Drept administrativ. Curs universitar*, vol. I, Ed. Universul Juridic, Bucharest, 2023.
 11. Săraru, Cătălin-Silviu, *Drept administrativ. Probleme fundamentale ale dreptului public*, Ed. C.H. Beck, Bucharest, 2016.
 12. Săraru, Cătălin-Silviu, *European Administrative Space - recent challenges and evolution prospects*, ADJURIS – International Academic Publisher, Bucharest, 2017.
 13. Săraru, Cătălin-Silviu, *Provocări contemporane în administrația publică și în dreptul administrativ*, in Constantin Brătianu, Doina Banciu, Nicolae Dănilă (coord.), *Economia și societatea în era digitalizării*, Publishing House of the Romanian Academy of Scientists, Bucharest, 2023, p. 241-260.
 14. Spáč, Peter, Petr Voda & Jozef Zagrapan, *Does the freedom of information law increase transparency at the local level? Evidence from a field experiment*, „Government Information Quarterly”, Volume 35, Issue 3, 2018, pp. 408-417.
 15. Szwedo, Piotr, *Global administrative law through the Polish lens: From practice to theory*, „International Journal of Constitutional Law”, Volume 13, Issue 1, January 2015, pp. 156–179, <https://doi.org/10.1093/icon/mov006>.
 16. The Charter of Fundamental Rights of the European Union was published in the Official Journal of the European Union on 26.10.2012, with the document number (2012/C 326/02).
 17. The Regulation (EC) No. 1049/2001 of the European Parliament and of the Council dated May 30, 2001, regarding public access to European Parliament, Council, and Commission documents was published in the Official Journal of the European Union on May 31, 2001, as L 145/43, 32001R1049.