

## Good Governance, Rights and State: Quo Vadis Administrative Law?

*İyi Yönetişim, Haklar ve Devlet: İdare Hukuku Nereye Gidiyor?*<sup>1</sup>

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### ABSTRACT

**Keywords:**

Governance,  
Rule of Law,  
Transparency,  
Accountability,  
Administration,

*With the increasing globalization phenomenon and industrialization, many changes in economic and social aspects have brought the idea that the state should act in accordance with the principles such as openness, transparency and accountability in its activities. In this context, the concept of governance has gained importance in recent years as a concept that considers the inclusion of individuals in the decision-making processes of the state and ensures transparency in its operations and actions. In particular, due to the expansion in the activities of the state, the concept of governance has been accepted in positive legal texts to prevent arbitrariness and to respect the area of protection of fundamental rights and freedoms. In this context, the fact that the state acts in accordance with the concept of good governance while carrying out the duties given by the constitution and laws plays an important role in the realization of the principle of the rule of law. In this context, the state of good governance is dealt with in the decisions of the European Court of Human Rights in terms of the activities to be carried out by the state and determining the quality is essential for the rule of law.*

### ÖZET

**Anahtar Kelimeler:**

Yönetişim,  
Hukuk Devleti,  
Şeffaflık,  
Hesap Verebilirlik,  
İdare,

*Artan küreselleşme olgusu ve sanayileşme ile birlikte, ekonomik ve sosyal bakımdan pek çok değişikliğin meydana gelmesi, devletin faaliyetlerinde açıklık, şeffaflık ve hesap verebilirlik gibi ilkelere uygun hareket etmesi gerektiği fikrini gündeme getirmiştir. Bu doğrultuda yönetim kavramı, devletin karar verme süreçlerinde bireylerin dahil olmasını, işlem ve eylemlerinde şeffaflığın sağlanmasını gözeten bir kavram olarak son yıllarda önem kazanmıştır. Özellikle devletin faaliyetlerinde yaşanan genişlemeye bağlı olarak yönetim kavramı, keyfiliğin önüne geçilmesi ve temel hak ve özgürlüklerin koruma alanına riayet edilmesi bakımından pozitif hukuk metinlerinde de kabul görmüştür. Bu bağlamda, devletin anayasa ve kanunlarla verilen görevleri yerine getirirken iyi yönetim kavramına uygun biçimde hareket etmesi, hukuk devleti ilkesinin gerçekleşmesinde önemli rol oynamaktadır. Bu kapsamda devletin icra edeceği faaliyetler bakımından iyi yönetim kavramının Avrupa İnsan Hakları Mahkemesi kararlarında ne şekilde ele alındığı ve niteliğinin belirlenmesi hukuk devleti ilkesi açısından elzemdir.*

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## 1. INTRODUCTION

The authority to use public power not only constitutes the essence of the state but also constitutes one of the most important characteristic features of the modern state (Gill, 2003:11). The use of the powers given by the constitution and laws in performing the activities of the administration requires the use of force in the face of the interlocutors of this legal power (Rousset, 1960:84). Therefore, the use of public power as envisaged in the constitution is an intervention in the fundamental rights and freedoms of individuals (Berisha and Berisha, 2019:25-26). In this context, with the idea of protecting individual rights within the framework of certain rules in the legal order, the concept of the rule of law has been developed (Costa, 2007:73) and different management models have been sought. As a result of these searches, it is aimed to create a transparent government system in which individuals can contribute to the decision-making process (Leftwich, 1993:605). To this end, especially 1970s and 1980s, there have been some changes in the management approach in order to ensure the good functioning of the administration (Weiss, 2000:796). In the light of these developments, the concept of good governance in the 2000s has taken an important place at the global level (Grindle, 2012:259).

Over time, modern states and multilateral organizations have begun to question what good governance means for the way in which they are structured, decided and implemented (Woods, 1999:39). As a result of this questioning, it was raised to provide such factors as accountability and predictability to the interlocutors of the actions and/or acts established in terms of the public administration approach (Young, 1998:19). In this respect, considering the principle of the legality of the administration (Poulet and Gibot, 2007:87), it is necessary to create general regulatory procedures in accordance with the principle of predictability and accountability. However, the existence of a system in which rights are protected provides the necessary environment for economic growth (Gould and Gruben, 1996:324). Therefore, it can be stated that there is a connection between the regular functioning of the administration and the economic development process (Abrahamsen, 2012:34). Also, it can be stated that the quality of the decision-making process in public administration has a positive role in making effective decisions in this context (Irvin and Stansbury, 2004:56). Thus, first of all, the definition of the concept of “*good governance*” and then the place of the concept in public administration and administrative law will be revealed.

## 2. DEFINITION OF GOOD GOVERNANCE CONCEPT

Although the concept of “*governance*” cannot be clarified, it can be said that it does not correspond to the concept of “*government*” (Finkelstein, 1995:367). Government is characterized by its ability to make decisions and its capacity to enforce them (Stoker, 1998:17). In other words, the concept of governance refers to a new management process or a method of how society is to be managed (Rhodes, 1996:17). The concept of governance with a dynamic structure is the process of decision-making and the process in which decisions are implemented or not implemented (Singh et al., 2009:1109). However, it can be said that the term “*governance*” refers to a wider cluster than the elements of organization and commodity/service provision for the state to perform operations and actions (Karpen, 2010:17). In fact, the concept of governance appears to be a term used to understand how public-private collaborations will take place between private individuals and the state (Esty, 2006:1498).

Over time, the new management approach has evolved from the unilateral decision-making system (government- society separately) to the interactive decision-making system (government with society) (Kooiman, 1993:35). Indeed, the reason for the creation of a governance model can be explained by the awareness that governments are not the only actors dealing with social and economic issues (Kooiman, 2003:3). In this concept, the term “*corporate governance*” is often used to express the balance of duty and decision between shareholders, officers and managers (Sale, 2013:1013). This method can be shaped within the framework of the statement of will made by a single person, as in the state model with the monarchy structure, but also in the context of more participatory individuals in terms of state models with a democratic state of law (Poto and Fornabaio, 2017:140). In this context, it can be stated that efforts to advance the rule of law accompany the promotion of good governance (Skaaning, 2010:449).

Good governance will guide mechanisms and methods for realizing issues such as participation and transparency by mainstreaming democratic procedures in decision-making processes (Alfredsson, 2002:19). In particular, the fact that the management approach includes the normative standards of the principles of participatory democracy and the rule of law results in the realization of the state-individual relationship in line

with more transparent principles (Hood, 2006:14). The principle of the democratic state, which is considered to be one of the characteristics of the state by constitution, refers to the notion of participatory democracy, which, beyond the classical representation of democracy, reduces democratization to the right to vote, with the active participation of social problems, non-state and private actors (de Burca, 2008:228).

The notion of good governance was not essentially based on any academic discourse or context, but rather on the implementation of international institutions, in particular the World Bank (Weiss and Steiner, 2006:1547), but over time it was embedded in positive legal texts. When shifting from the definition of “*governance*” to the concept of “*good governance*”, it is more concentrated on what “*ought to be*” (Grindle, 2007:555). Especially, the concept of good governance has different dimensions and elasticity in terms of its scope and potential coverage (Doornbos, 2001:95). In particular, the inclusion of international and comparative perspectives has led to an understanding of how and why the concept of governance is differentiated across countries, as well as addressing the challenges facing countries in the face of globalization in specific administrative issues (=environmental, public health, telecommunications, public housing projects, etc.) (Fitzpatrick et al., 2011:821).

Good governance is the effective, honest, fair, transparent and accountable use of public power by administrative authorities (Sinha, 2006:539). Also, good governance in developed countries is defined by market and new public management models to reduce costs and increase accountability of managers and satisfaction (Sangita, 2002:325). With the effect of neoliberal understanding, it can be stated that efficiency and quality elements gain importance in terms of the operation of the administration (Fougner, 2008:308). As a matter of fact, when the subject is evaluated in the context of good governance, it can be stated that the state should be closer to the individuals and that it should have a positive impact on society in social and economic terms (Karpen, 2010:17). In the period after 1990, the World Bank (WB) developed a model of governance that was adopted by international economic and financial institutions such as the International Monetary Fund (IMF), the Organization for Economic Development and Cooperation (OECD) and the United Nations Development Program (UNDP) (Ciborra and Navarra, 2008:378).

Considering internationally, it is seen that the concept of good governance is evaluated by OECD and EU countries (Niblock, 1998:229). In this regard, the decision of the Committee of Ministers of the European Union, prepared in 1977 number of (31) On the Protection of The Individual in Relation to The Acts of Administrative Authorities is important. The general principles set out in this decision -in the context of the managerial method- are in fact a light on the concept of good governance (Akıllıoğlu, 1981:37). Again, *Criminal Law Convention on Corruption*, prepared by the Council of Europe on 27 January 1999, emphasized that corruption has undermined the rule of law, democracy and human rights, and weakened good governance and social justice (Andreevska and Raicevic, 2018:113). Report on the Role of the Opposition in a Democratic Parliament, The European Commission for Democracy through Law (the Venice Commission) noted *inter alia*, the following;

*“[...] Opposition function implies scrupulous control, scrutiny and checks on authorities and officials behaviour and policies. However, good governance advises that parties in opposition (as well as ruling parties) should refrain from practices that may erode the democratic debate and which could eventually undermine the trust of citizens in politicians and parties”*

In the subsequent period, “*The White Paper on European Governance*” prepared by the European Commission was established to meet the need for deep-rooted administrative reform in the EU (Kesim and Petek, 2005:50). Especially at the EU level, the idea of change through persuasion, monitoring and mutual learning was promoted instead of concepts such as hierarchy and sanctioning (Livioara, 2009:176), and as a result, the evaluation of efficiency and responsibility in the context of administrative law was in question. In addition, some of the recommendations of the Council of Europe recommend that the concept of good governance is used. For example, regarding academic freedom and freedom of expression the relevant parts of Recommendation 1762 (2006) of the Parliamentary Assembly of the Council of Europe on “*Protecting Academic Freedom of Expression*” read as follows: “*the institutional autonomy of universities should be a manifestation of an independent commitment to the traditional and still essential cultural and social mission of the university, in terms of intellectually beneficial policy, good governance and efficient management*” (Also see, Kula v. Turkey, 2008). In this context, it can be said that good governance is a multi-faceted concept that is used in the effective management of public authorities and is related to more than one individual right (Andreevska and Raicevic, 2018:113).

Also, in the first paragraph of Article (Art.) 41 of the European Charter of Fundamental Rights it is emphasized that everyone “*has the right to demand that their work be seen in an impartial and fair manner and within a reasonable time*” by the institutions and bodies of the Union. The fact that individuals who are in a weaker position than the administration as a result of the administration of public power in terms of administrative law will be granted procedural safeguards will ensure the protection of fundamental rights and freedoms of individuals (Truchet, 2014:41). It is difficult to imagine the existence of a rule of law without general principles, because it is possible through these principles to resolve disputes and realize the rights of citizens according to procedural ways, instead of resorting to other means that may even lead to violence in practice (Batalli and Fejzullahu, 2018:26). Therefore, the introduction of some basic principles in the realization of the transformation to governance will provide a clear understanding of the concept.

### 3. THE PRINCIPLES OF GOOD GOVERNANCE

There are various sources about the nature and number of the principles of good governance. For example, according to the UN Economic and Social Council for Asia and the Pacific, these principles are expressed as participation, consensus-based, accountability, transparency, sensitivity, effectiveness and efficiency, fair and inclusive, and the rule of law (UNESCAP, 2009). In the Resolution of the Committee of Ministers of the European Union, prepared in 1977, number of (31) On the Protection of The Individual in Relation to the Acts of Administrative Authorities; access to information and documents, legal aid and representation, justification of procedures, demonstration of ways of application against the transaction (Ponce, 2005:558). In this regard, the *White Paper* prepared by the European Commission also includes some principles (For example; art.10). Although it has led to skeptical comments when it was made public in 2001, the *White Paper* on European governance and, more generally, the concept of governance is not an insignificant argument, but rather a result of the long working process in the Commission (Magnette, 2003:147). In accordance with the definition of governance, the Commission stated the principles as openness, participation, transparency, accountability, efficiency and consistency (Kesim and Petek, 2005:43). In this context, although some of these principles can be evaluated under a category within itself, this will not be the case in terms of principles that are different from each other. In the light of the principles mentioned in this direction, the quality and effects of the concept of good governance should be systematically put forward.

The issue of providing the necessary opportunities by the state in terms of openness and access to information and documents of persons. In this respect, the right to information, which is one of the requirements of democracy and the rule of law, plays an important role in increasing the public trust towards the state as well as the functions of closer to individuals, openness to public control and transparency (Jain, 2012:506). Provision of effective public administration to fulfill the duties assigned to the administration in the Constitution and laws will be possible by the cooperation of national governments with democratic, transparent and participatory processes in cooperation with the lower level public administration, private sector, non-governmental organizations and international organizations (Bala, 2017:595).

Transparent management can increase the process of participation in decisions taken from a political point of view and may create transparency in account of accountability and decision-making procedures in the hands of economists in the need to establish a predictable policy that eliminates the government’s discretionary power (Thirkell-White, 2003:118). In particular, the decision-making processes and their effectiveness should be acted in accordance with the principle of transparency to ensure effectiveness (Esty, 2007:518). Indeed, in the context of administrative law, the principle of transparency is important in order to better reflect the practices that affect accountability, and to provide the justified decision principle (Kingsbury et al., 2005:28). In this context, a transparent government provides the necessary data in the decision-making process by establishing various horizontal accountability mechanisms in order to carry out its activities in accordance with the law (Reif, 2004:79). In this context, in the light of the above explanations, it can be stated that “*the principle of transparency*” is related to “*the principle of accountability*” and is one of the important components of the concept of good governance (Weiss and Steiner, 2006:1550).

In addition, the concept of good governance can be evaluated at the economic and social level in order to ensure effective public administration. In particular, the World Bank’s emphasis on good governance in the economic sphere was focused on accountability and transparency, focused on efficiency in public administration (Addink, 2017:22). The development of mechanisms, which provide social and economic accountability, will play a role in protecting the fundamental rights and freedoms of individuals in the execution of state operations and actions (Sano, 2015:220). In this context, it is necessary to establish a system where accountability is found and this is

reflected in the decision-making process and the execution phase. As a matter of fact, within the framework of modern public administration, trying to ensure certain obligations to the state with respect to the protection of the rights and freedoms of individuals makes the principles of procedure more functional (Kingsbury et al., 2005:30).

Indeed, the administrative procedure, in particular the principle of accountability, implies that the administration's use of the public interest in a faster and more effective manner and that the administrative proceedings rely on an objective and careful investigation, thus guaranteeing the rights and benefits of those benefiting from public services in a broad sense (Azrak, 1964:10). In this way, it is targeted to participate in decision-making and enforcement processes with the participation of the management, which is thought to provide democratization (Alfredsson, 2002:23). For example, according to the first paragraph of the 1958 French Constitution art. 72-1, "*The conditions in which voters in each territorial community may use their right of petition to ask for a matter within the powers of the community to be entered on the agenda of its Deliberative Assembly shall be determined by statute*".

In line with the above principles, it can be said that the principle of good governance requires public authorities to act at the appropriate time, with the appropriate method and above all in the case of a subject in the public interest (Megadat.com Srl. v. Moldova, 2008). In addition, equating the concept of good governance with the concept of government contributes to improving public sector management by solving technical problems of administrative capacity in the delivery of services to society, accountability through better auditing, and improved access to information for both decisions-makers and individuals (Smith, 2007:4). The concept of good governance refers to a wider scope than the concept of effective government (Ferreira, 2008:442). For example, an autocratic state may be effective, but the concept of good governance in terms of openness, transparency and accountability is integral with human rights (Ferreira, 2008:442). In this context, good governance is not a concept that concerns only public administration; at the same time, evaluating it as a concept that imposes positive obligations on the state is essential for the protection of fundamental rights and freedoms.

#### **4. EVALUATING THE CONCEPT OF GOOD GOVERNANCE IN THE CONTEXT OF FUNDAMENTAL RIGHTS AND FREEDOMS**

The concept of good governance, which has many different aspects, such as the concept of the rule of law, is dealt with in different ways in the legal systems of the country (Addink, 2019:76). The European Court of Human Rights (the Court) assesses whether there is a violation of the rights contained in the European Convention on Human Rights (the Convention) while conducting the activities of States Parties and acts on certain concepts during this evaluation process (Yourow, 1987:111). In this respect, while examining the conformity to the Convention, the Court reiterates the special importance of the principle of good governance (Antoni Lewandowski v. Poland, 2012). Public Authorities should act promptly and, above all, in a coherent manner, in particular when a problem with the general interest is in danger, affecting property rights, including property rights (Antoni Lewandowski v. Poland, 2012). In addition, the principle of good governance requires that public authorities act in an appropriate and maximum coherence where there is an issue of general interest (Berger-Krall and Others v. Slovenia, 2014). The Court reiterates the particular importance of the principle of "*good governance*" when examining the legality of this justification. When a problem in the general interest is at stake, especially when the issue affects fundamental human rights, such as property rights, public authorities should act in a timely and appropriate and, above all, consistent manner (Rysovskyy v. Ukraine, 2011).

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The principle of respect for acquired rights, which expresses the protection of the rights of individuals in a lawful manner, stems from the principle of the inability of the administrative proceedings (Ricci, 2004:65-66). As a general rule, the principle of good governance, in line with the principle of the rule of law, should not interfere with the occasional mistakes made by the authorities, even if they arise from their negligence (Beinarovič and Others v. Lithuania, 2018). However, the need to correct an old mistake should not be disproportionate to a new right acquired by a person who is based on the legitimacy of the act of public authority in good faith (Beinarovič and Others v. Lithuania, 2018). Although it is said that good governance is a concept related to fundamental rights and freedoms in general, it is seen that certain rights are emphasized and attention is drawn in judicial decisions (Sever, 2018:106). In this direction, the right to property, the right to data protection and the right to a fair trial will be evaluated in this study.

#### 4.1. In Terms of Property Rights

The principle of responsibility of the administration resulting from its operations and actions was recognized in the late 19th century (Gonod, 2003:30). According to the *Blanco* decision issued by Tribunal des Conflits in 1873, it was decided that the administration would be responsible for the damages arising from the administrative activities and that the solution would be in administrative jurisdiction (Long et al., 2015:2). In this direction, if the damages arising from the operations of the administration are in question, this damage must be eliminated in accordance with the decision of the competent court (Mourès, 1957:145). In other words, State authorities, who are unable to comply or fail to comply with their procedures, should not be allowed to profit from their misconduct or to escape their obligations (Bogdel v. Lithuania, 2013). In the case of the cancellation of the ownership of an incorrectly transferred property, the principle of good governance does not only impose on the authorities the obligation to act promptly to remedy the errors immediately, but may also entitle them to pay an adequate amount of compensation or to pay another appropriate compensation of the previous appropriate agreement (Bogdel v. Lithuania, 2013).

In the case of *Czaja v. Poland*, the Court reiterates “*the particular importance of the principle of good governance. It requires that where an issue pertaining to the general interest is at stake, especially when it affects fundamental human rights, including property rights, the public authorities must act promptly and in an appropriate and above all consistent manner*” (Czaja v. Poland, 2012). The Court also considers that, after discovering its errors, the authorities had failed in their duty to act quickly and appropriately and consistently (Czaja v. Poland, 2012). Considering that the concept of good governance includes the elements of predictability and accountability, it should be ensured by the judicial bodies that the administration’s operations and actions that because responsibility are unlawful, and in the context of good governance, it is necessary to ensure the removal of the individuals subject to such damage.

In the case of *Moskal v. Poland*, a property right was generated as a result of the positive assessment of the applicant’s file which had been attached to her in a good faith application and informed of the rights of the Social Security Council (Moskal v. Poland, 2009). Before being invalidated the decision of 17 May 2001 had, of course, had an impact on the applicant and his family (Moskal v. Poland, 2009). It should be emphasized that the delay time of the authorities examining the applicant’s dossier was relatively long and that the decision on the termination of the allowance was made relatively quickly and immediately after the fault was discovered (Moskal v. Poland, 2009). It should also be observed that, as a result of the measure taken, the applicant must be confronted without any transitional period in order to comply with the total loss and the new condition of the early retirement pension which constitutes the sole source of income. In the context of property rights, particular importance must be attached to the principle of good governance (Moskal v. Poland, 2009). Therefore, The Court concludes that there is no fair balance between the rights of individuals and the public interest in the administration which does not comply with the principles of good governance (Moskal v. Poland, 2009).

As stated earlier, the Court considers whether there is a fair balance between the demands of the general interests of the community and the protection of the fundamental rights of the individuals (Sporrong and Lönnroth v. Sweden, 1982). In this context, it can be stated that the concept of good governance is also addressed in the evaluation of the measures of proportionality to the fundamental rights of individuals. In the case of *Gaina v. Lithuania*, “*the Court observes that the domestic authorities noticed the possible mistake in the calculation of the size of S.F.’s land promptly – about six months after the Kaunas District Court’s ruling of 23 May 2001 and less than two months after the KCA’s decision to restore the applicant’s property rights*

(compare with *Moskal v. Poland*, no. 10373/05, § 69, 15 September 2009)” (*Gaina v. Lithuania*, 2016). The Court was therefore not convinced that the applicant was under an excessive burden and that the fair balance had been damaged and that the right to property had not been violated (*Gaina v. Lithuania*, 2016). In this context, the Court seeks the existence of a fair balance between the interventions in accordance with the principle of good governance for the persons who have acquired the right to property in good faith and the public interest and takes into consideration the circumstances of the case (*Gaina v. Lithuania*, 2016).

One point that needs to be considered when establishing the relationship between the concept of good governance and the right to property is related to tax liability. The imposition of taxes is a matter for legislation (Bradley and Ewing, 2007:53). And the area of tax liability of individuals is essentially the area where the state has the least discretion (Legrand and Wiener, 2017:176). In a democratic country, citizens are obliged to pay the amount specified by law by taking into consideration their payment capacities (La Scala, 2009:497) and the lawfulness of the activities of the state in this area should be examined. Nevertheless, there is a general opinion that the lawsuits related to tax liability concern the sovereignty of the state and are therefore related only to the field of public law (La Scala, 2009:495).

However, civil rights may also be affected by administrative activities related to tax liability (For example, see the violation of the taxpayer’s freedom of movement: *Riener v. Bulgaria*, 2006). In this context, there is a relationship between national tax systems and individual rights (Gutmann, 2009:487), and it is a requirement of good governance that the state establishes the necessary legal mechanisms in order not to touch on the essence of these rights. In that way, in the case of *Gasus Dosier- und Fördertechnik GmbH v. The Netherlands*, although the 1961 Tax Collection Guidelines, which exists in domestic law, does not include the legal rules, it is emphasized that the state is obliged to act in accordance with the principles of good governance and should not be separated from it (*Gasus Dosier- und Fördertechnik GmbH v. The Netherlands*, 1995). Because as a result of the publication of the 1961 Guidelines, individuals were entitled to trust themselves in the legal proceedings against the tax authorities (*Gasus Dosier- und Fördertechnik GmbH v. The Netherlands*, 1995).

However, in the case in question, the Court concluded that the equitable balance between the interference by the State and the property of the Company was not impaired, with an emphasis on the principle of proportionality (*Gasus Dosier- und Fördertechnik GmbH v. The Netherlands*, 1995). In this context, it can be stated that the concept of good governance plays a role in the evaluation of “whether there is a fair balance between the intervention and the public interest and whether the principle of proportionality” is complied with in the case of an action by the administration on the tax liability.

Ensuring compliance with the principle of legality and legal certainty in the execution of administrative activities is not sufficient in terms of the principle of the rule of law, but also the legitimate expectations of individuals should be taken into consideration (Craig, 1996:298). In particular, in the French doctrine of administrative law, the concept of legitimate expectation has not been adequately addressed while fundamental rights have been broadly addressed (Mazeaud, 2006:363). Today, however, legitimate expectations can be considered as a concept which is considered within the framework of protection of individual rights and has theoretical foundations in positive law (Barak-Erez, 2005:584). Thus, in the case of *Grigolovic v. Lithuania*, the applicant complained that “the State authorities had breached his rights by not restoring his property rights to part of his father’s land in natura and failing to grant him a plot of equal value or fair compensation for the land” (*Grigolovič v. Lithuania*, 2017). Even though that right was created in an inchoate form, it has clearly established a legal basis for the State’s obligation to impose it, and the Court has argued that the applicant could have a viable right and a legitimate expectation of a proper recovery of property rights (*Grigolovič v. Lithuania*, 2017). The Court further concluded that the applicant’s legitimate expectation of restoring the property rights to the remaining land area had been unjustified by the authorities’ failure to act (*Grigolovič v. Lithuania*, 2017).

Consequently, the Court notes that the State had not acted under the principle of good governance, that the balance which had to be between the general interest and the applicant’s right to property had been impaired and that the applicant had had to face an excessive burden which was not in accordance with Art. 1 of Protocol No.1 (*Grigolovič v. Lithuania*, 2017). Again, in the case of *Nekvedavičius v. Lithuania*, after Lithuania gained its independence in 1990, the applicant filed an application for reinstatement in accordance with the 1991 legislation relating to the return of property rights (*Nekvedavičius v. Lithuania*, 2013). The principle of “good governance” requires the public authorities to act in good time, in a suitable manner and with maximum consistency where there is a problem in the general interest (*Nekvedavičius v. Lithuania*, 2013). In this connection, the State had prevented the applicant’s property rights from being withdrawn for a long time, as he had failed to comply with his judgment of 27 November 2001 and, therefore, had been unfairly affected by the applicant’s legitimate expectation of obtaining compensation in accordance with the domestic law in force

(Nekvedavičius v. Lithuania, 2013). Therefore, it can be stated that the principles of good governance, the fulfillment of legitimate expectations and the link between individual rights are established in these decisions. The establishment of a national human rights institution does not automatically lead to the conclusion that it will be effective in establishing good governance and in the protection of human rights (Nekvedavičius v. Lithuania, 2013).

Since good governance requires that these institutions act in a coherent and lawful manner (Addink, 2019:104), the contracting authority must conduct the execution of the decisions in a timely and complete manner. In the case of *Krstić v. Serbia*, by failing to fully comply with the 1994 decision to date, almost nineteen years following its adoption (*of which more than ten years fall within the Court's competence ratione temporis*), the national authorities have prevented the applicant, who did everything in his capacity to obtain enforcement of the decision, from receiving the supplementary pension he reasonably expected to receive (*Krstić v. Serbia*, 2013). According to Court, “*The interference with the applicant's right to the peaceful enjoyment of his possessions was therefore unlawful. Such a conclusion makes it unnecessary to determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of individual rights*” (*Krstić v. Serbia*, 2013). So, it should be noted that if the administration's final decision on the matter is delayed, the existence of this issue may lead to a situation that is not in accordance with the principles of good governance as it may prevent the peaceful use of property rights (*Krstić v. Serbia*, 2013).

In another case, *Kryvenkyy v. Ukraine*, Court reiterates that “*the taking of property without payment of an amount reasonably related to its value will normally fail to respect the requisite fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights and will constitute a disproportionate burden on the applicant*” (*Kryvenkyy v. Ukraine*, 2017). In the context of the cancellation of property rights that are given incorrectly, the principle of good governance may impose on the authorities a right to immediately rectify its mistakes and at the same time to pay a compensation for the former good-faith holders (*Kryvenkyy v. Ukraine*, 2017). Therefore, with respect to the gains of individuals acting within the framework of good governance in terms of faulty acts carried out by the administration, it may be possible to grant certain compensation in order to recover the loss besides the withdrawal of the transaction.

#### **4.2. In Terms of the Right of Access to Information and the Right to Data Protection**

The right of access to information is not only evaluated in the framework of freedom of expression but also the idea of obtaining information through any media and expressing them is considered as right (Lor and Britz, 2007:388). The right to access information can be said to be linked to the principle of good governance as it is an autonomous right that aims to improve transparency (*Magyar Helsinki Bizottság v. Hungary*, 2016). In essence, the right to freedom of information prohibits a Government from obstructing the receiving of information that a person may or may not want to give others, and does not give the individual access to a record containing information about his personal position or imposes on the State the obligation to provide this information to the individuals (*Leander v. Sweden*, 1987). However, if the information on the prevention of access to information is appropriate for the individual to exercise his right to freedom of expression, there may be a situation with the provision of Art. 10 of the Convention, the availability of such information is necessary to ensure transparency and good governance (*Magyar Helsinki Bizottság v. Hungary*, 2016).

Developments in information technologies and globalization have forced the legal systems of countries to make the necessary arrangements related to the right to data protection (Kaya, 2011:2). This has also resulted in arrangements for the right to data protection in the supranational legal systems (González Fuster, 2014:75). In the light of the above-mentioned principles of good governance, openness and transparency should be ensured in terms of the activities of the state, but individual rights must also be respected. The Court reiterates that “*the concepts of private and family life are broad terms not susceptible to exhaustive definition*” (*Hadri-Vionnet v. Switzerland*, 2008) and “*Article 8 protects the right to personal development, whether in terms of personality or of personal autonomy, which is an important principle underlying the interpretation of the Article 8 guarantees*” (*Bărbulescu v. Romania*, 2017).

In this context, the right to protection of the personal data of individuals can be evaluated within the framework of Art. 8 of the Convention. As stated in the case of *National Federation of Sportspersons' Associations and Unions (FNASS) and Others v. France*, “*At the fourteenth Council of Europe conference of Ministers responsible for sport, held on 29 November 2016, the Ministers adopted Resolution No. 1.1 on the role of the*



*governments in addressing emerging challenges in the fight against doping in sport at national and international level. (...) The Ministers recognised that all anti-doping organisations must comply with the rules of good governance and the principle of proportionality, while respecting the fundamental rights of the individuals subjected to the anti-doping regulations, particularly when it came to data protection”* (National Federation of Sportspersons’ Associations and Unions (FNASS) and Others v. France, 2018).

Therefore, it is a requirement of good governance that the state is transparent and that individuals take necessary measures to protect their personal data. In the present case, the fact that the athletes in the test pool according to the Court carried out some tests in the scope of the anti-doping test and it was foreseen for the top-level athletes to give certain information about the place and time of the test, however, this transparency and accessibility requirement could negatively affect the quality of private life it is enough to influence and think that it has consequences for family life and lifestyles (National Federation of Sportspersons’ Associations and Unions (FNASS) and Others v. France, 2018). In the light of the foregoing, the Court considers that the applicants have given their location information to interfere with their exercise of their rights under the first paragraph of Art. 8 and, unless such interference has been carried out in accordance with the second paragraph of this Art., it has not fulfilled one or more of the legitimate aims and will violate Art. 8 unless it is necessary in a democratic society (National Federation of Sportspersons’ Associations and Unions (FNASS) and Others v. France, 2018). When evaluated with the concept of good governance, it is necessary to process the data fairly, for certain purposes and only on the basis of the consent of the data subject or other legitimate grounds specified in the law, and it should be ensured that this data is controlled by an independent authority (McDermott, 2017:2).

### 4.3. In Terms of Right to a Fair Trial

The principles of good governance are even more important in the context of administrative proceedings concerning a dispute which is decisive for the outcome of civil rights (Ekholm v. Finland, 2007). Indeed, in the *Ekholm v. Finland* case, the ECtHR decided on the link between the right to a fair trial and good governance in the domestic legal system (Ekholm v. Finland, 2007). The Constitution of Finland (*perustuslaki, grundlagen; Act no. 731/1999*) provides that everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or authority, and to have a decision pertaining to his or her rights or obligations reviewed by a court of law or another independent organ for the administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal and the other guarantees of a fair trial and good governance shall be laid down by an Act (section 21). The Court reiterates that the length of the proceedings should be considered in the light of the circumstances of the case and whether it is reasonable to consider the following criteria: “*the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute*” (Ekholm v. Finland, 2007). Failure to comply with the positive obligations imposed on the State in accordance with good governance in this direction would imply a violation of Art. 6/1 of the Convention.

In addition to global institutional developments and activities, the concept of good governance supports human rights and legal regulations in this regard (McCann, 2018:115). It is important to protect and develop human rights that every State should exercise the right to a fair trial as a fundamental right in accordance with their constitutions and, if necessary, adopt the necessary legislation to fulfill this obligation (Sinha, 2006:549). Of course, in some cases it is possible to have no or very little harm, so violating the right to a fair trial without undue delay does not always lead to moral damage (Sever, 2017:69). The guarantee of the concept of good governance manifests itself in the legal protection of individuals and the effective use of the right to a fair trial (Addink, 2017:18). In terms of effective legal remedy and fair trial process, it can be mentioned that the concept of good governance will come to the fore in terms of administrative disputes regarding civil rights and obligations (Toggenburg and Grimheden, 2016:113). The right to a fair trial itself is a value-based concept, so its connection with the concept of good governance is important (Vácz, 2022:164). The right to a fair trial, the right to non-discriminatory treatment and several other classical human rights clearly express the norms of fair procedure. In relation to these procedural norms, participation in the decision-making process has become an increasingly valuable topic of the literature (Boda, 2013:15). The popularity of the principle that public administrations must comply with well-defined rules in order to make the right decision has increased significantly in recent years. On the one hand, the principle of the importance of procedural rules is linked to the idea of good governance, and on the other hand, the need to establish the grounds on which a decision is based, administrative authorities, weighing all relevant interests and all data considered are elements of value within the scope of the right to a fair trial (Vácz, 2022:167).

## 5. CONCLUSION AND DISCUSSION

Since the beginning of globalization and the advancement of technology movements, the governmental models have changed since the 1980s. As a result of this change, individuals have come to the fore as a subject that participates only from being managed. In this context, good governance is considered a concept in which participation, accountability and openness are involved. The public power of the administration in state individual relations can be considered as an intervention in the fundamental rights of the individuals exposed to it. Since the interference with fundamental rights and freedoms can only be made as prescribed by law; the principle of legality and the rule of law should be considered when explaining the concept of good governance. In this sense, there is a direct relationship between the principles of good governance and human rights.

In this respect, the concept of good governance in the decisions of the European Court of Human Rights is important in terms of assessing the lawfulness of human rights interference with the activities of the state. In the judgments of the European Court of Human Rights, the concept of good governance is mostly evaluated in the framework of the right to property on the basis of Art. 1 of the Additional Protocol 1.

However, the concept of good governance cannot be limited to the right of ownership. As a matter of fact, since the administration does not fully comply with the decisions made by the judicial authorities or does not implement these decisions in a timely manner, it undermines the predictability and accountability required by the principle of good governance; it may also violate other rights in the specific event as well as the property right in the broad sense. Again, since the unauthorized use of personal data of individuals regarding the right to protection of personal data is not in accordance with the principles of good governance; violation of this right.

In addition, in the event that individuals have reasonable expectations or have acquired rights as a result of the state acting in accordance with the planning activities, the state's activity against the foreseeability will result in a situation contrary to good governance. Lastly, it can be said that when the state has certain positive obligations related to the right to a fair trial, it is responsible for individuals in terms of the necessary judicial order and access to justice in the framework of the good governance principle. Therefore, it can be stated that the concept of good governance has an important place in the provision of the principle of the rule of law and has been included in this context in the decisions of the European Court of Human Rights.

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