

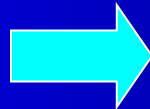
Principles of Good Governance

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Principles of Good Governance

-term, origin

- requirements, guidelines **for the proper performance of public administration** in the modern legal state
- developed and applied in the **European administrative area** (= systems of public administrations of member countries of the Council of Europe, the EC / EU and the EU itself)



generally recognized

Principles of Good Governance

- content

= standards (level, quality) of public administration

- many established and contained in the law (*legally binding*)
- advocated the practice of other documents, procedures and mechanisms (*political, ethical, managerial*)
- + expected by the community (citizens, businesses, ..)

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- role – 1.

Serve:

- fulfillment of the "right to good administration"
 - Article 41 of the Charter of Fundamental Rights; Nice 2000; a policy document, but already used in the jurisprudence of the Court of First Instance and the ECJ = becoming legally binding
- implementation of the constitutional principles of rule of law in terms of public administration (the Constitution, the Charter of Rights and Freedoms) = fundament of the relationships between citizens and public administration

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- role – 2.

Serve:

- as a criteria for the activity of the **Ombudsman**
- for achieving compliance with the requirements of the right to a fair (equitable) **administrative proceedings**
- for correct **interpretation and application** of other provisions of the legislation - specific laws, implementing regulations, ...

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- role – 3.

Assist understand and respect **judicature**,
which is based on the principles of:

- ECJ, ECHR
- Constitutional Court
- administrative courts
- general courts



reduce the risk of improper or unlawful
decisions and practices of public administration.

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- *general role:*

Affect **proper and good** functioning of the public administration (administrative bodies),

fulfill their **goals and tasks**, using **appropriate methods** and correct **forms** of activity (and **precisely**)

from the perspective of **public interest and the rights and interests of citizens.**

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Therefore serve in general:



- implementation of requirements (ideas) of justice and rationality (reasonability) / good / public administration,



- eliminate or reduce risks associated with improper exercise of public administration ("bad governance" - "mal-administration").

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- risks of breach

Possible side effects:

- **Administrative review** under the Code of Administrative Procedure
- **Judicial review** of administrative decisions, acts, inactivity
- **Liability for damage**
- **Penalties** under the special laws
- **Labour** (staff - disciplinary) penalties

- **+ Political and social implications** (dissatisfaction affect on the results of the elections, petitions, assembly, strikes, negative news in the media, ...)

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- *nature, binding* – 1.

Many of the **legal nature** (and thus **legally binding**)

- define mandatory requirements on the procedures and decisions of a legal nature (= governed by the law, with legal consequences).

Some of them are **the nature of value / "content"** / - focusing on justice, protection of rights, etc. Often they guide the content of the decision (**proportionality, predictability, protection of public interest, ...**).

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- *nature, binding* – 2.

Some - the nature of the **procedural** / "technical" / - how to deal with (solve) procedural issues (timeliness, speed, procedural equality, process economics, ...).



But the two categories operate in terms material and process = question of appropriateness, accuracy of the procedural and substantive issues) or **guidance**.

How to decide, how to proceed.

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- nature, binding – 3.

Some principles:

- of the **ethics** (courtesy, politeness) nature (content, origin)
- from the area of **efficiency** (economy - costs, speed, finding adequate solution)

Some of them **drawn to the regulation:**



legally binding

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- *means of adjustment – 1.*

Explicitly

Implicitly (tacit - without directly naming or definition) = may be drawn of the express provisions of the Constitution, the Charter, international agreements ...

- *e.g.. the principle of proper justification (reasoning), or "ne bis in idem"*

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- means of adjustment – 2.

= similar to general legal principles, i.e. the basic guidelines, the main ideas (objectives), standards

- **Principles of Good Governance** – act (operate) in terms of public administration.
- Means of adjustment (How they are set up) - does not affect the validity of principles.

Apply both - explicit and implicit principles!!!

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- effect of principles – 1.

- As a general legal principles (principles of administrative law)
- Higher legal force than the "simple" rules (some of them represent the constitutional principles)
- Guideline for the interpretation of the rules (individual provisions must be interpreted in accordance with the principles)

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- effect of principles – 2.

- Principles (as opposed to the rules) are not mutually exclusive, on the contrary apply simultaneously (= the need for balance, finding an appropriate use, including a compromise - an amicable solution).
- Apply directly only if the law does not provide in a specific rule something else (otherwise "only" affect the interpretation and application of rules).

Principles of Good Governance

- effect of principles – 3.

- apply directly
- in the area of administrative discretion
(discretionary power)
- where the law does not / at all or not all the
necessary / specific rules, aspects, solution

= in public administration quite often

As a guide for the proper solution!

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- legal binding - enforceability

Principles of Good Governance (of the legal nature):

- are **legally binding** (set by the law),
- can be **legally claimed** (by means of administrative/judicial review),
- can be **used for the argumentation** (from the point of view of the parties to the proceedings and also administrative bodies).

Principles of Good Governance

= **guidelines** for legal, reasonable, predictable,
non-discriminatory, objective, timely (well-timed),
adequate, appropriate, effective, economical,
.... **GOOD, SUCCESSFUL...**
solutions and procedures of public administration
(administrative bodies).