Greenlights in Good Administration

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Abstract

There can be little doubt that one of the essential objectives of administrative law is to achieve good administration, that is, to ensure that public authorities act effectively and reliably in the public interest. In their proceedings, they must listen to the people concerned, take their views into account and act fairly, transparently and impartially, always bearing in mind the interests of the community and, at the same time, the rights of the individual. However, the way in which this principle is implemented can itself give rise to disagreement. Should the courts play a primary (or even exclusive) role in ensuring good administrative behavior, or is this better done by other means? Is it appropriate to draw from other areas of law or does the specific nature of administrative law preclude this? This paper examines two classic theories of public administration, the green light and the red light, in an attempt to synthesise the two approaches. It does so primarily from a constitutional administrative procedural perspective.

Keywords: good administration, greenlights, redlights, judicial review, procedural principles

1. Introduction: The Lights in the Light of Good Administration

Typically, it is a subject on which most legal scholars can easily agree, if only they can agree on what they want from administrative law.[1] It cannot be emphasized enough that in European legal literature the term good administration is used mainly in the procedural sense and thus good

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1 Carol Harlow, 'Global administrative law: the quest for principles and values', *European Journal of International Law*, Vol. 17, Issue 1, 2006, p. 193.

administration is understood as the requirement of good administrative procedure, and in this study, I will use the term in this sense throughout. Good administration is thus understood to be a set of administrative principles which set out certain requirements in relation to procedural law rather than substantive law, and which ensure not only that the executive acts in accordance with the law, but also that it acts predictably, efficiently and fairly.[2] In addition, the public authorities must exercise the powers conferred on them by law in such a way as to avoid an excessively rigid application of the law. In other words, they must not only avoid any unfair approach, but also seek to apply the legal rules in the light of social and economic realities. The extent to which good administrative behavior is achieved in this respect can be measured by the principles of proportionality and the legitimate expectations of clients, principles which most European states have now elevated to the level of doctrine and, in some cases, even to the constitutional level.[3]

The principle is far from marginal today. Nowadays, it is no longer enough for public authorities not to act arbitrarily; citizens want more. They want to know why and how public power is exercised by public administrations, and therefore they want an accountable and transparent public administration in which the decision-maker is in the best possible position to reach the best decision, by which they mean that he or she is in possession of all relevant information and has the right reasons for his or her decision.[4] The term 'right to good administration' has become something of a buzzword these days, and is found in many European and national legal sources, and even in the case law of various European courts. Nevertheless, there is some uncertainty as to its precise meaning. Therefore, for the principle to be valid, *i.e.* to serve as a solid legal basis, it is not possible to simply invoke this general principle, to 'pull it out of the hat', but it is necessary to determine in each individual case precisely what specific rule, inherent in or derivable from the principle, has been infringed in the case in question. As the content of the doctrine changes and develops

2 Lord Millett, 'The right to good administration in European Law', *Public Law*, Vol. 47, Issue 2, 2022, p. 310.

3 Theodore Fortsakis, 'Principles governing good administration', *European Public Law*, Vol. 11, Issue 2, 2005, p. 209; Péter Váczi, *A jó közigazgatási eljáráshoz való alapjog és annak összetevői*, Dialóg Campus, 2013.

4 Juli Ponce Solé, 'Good administration and European public law. The fight for quality in the field of administrative decisions', *European Review of Public Law*, Vol. 14, Issue 4, 2022, p. 1504.

from one stage to the next, there is no doubt that it is increasingly becoming a kind of framework, a collection of procedural rules which impose new obligations on the administration.[5]

There is a fundamental divergence of views among European states on the legal nature of procedural rules. *(i)* The continental approach follows a utilitarian approach to the formulation of rules of administrative procedure, according to which good administrative procedure equals efficient administration. According to this view, procedural rules are merely means to an end, and procedural principles such as the right to be heard or the right to information are merely necessary preconditions for the ultimate efficient decision, which is to reach the right decision. *(ii)* In contrast, the common law approach provides a protective justification, focusing on the impact of the administrative decision on the citizen. The individual should not only be protected from unreasonable decisions, but also from unfair procedures, a kind of 'fair play' that goes well beyond the requirement of efficient administration. From this perspective, procedural fairness is therefore an end, not a means or a necessary by-product.[6] Of course, the two concepts are not so clearly separated in each state, and there should be no difficulty in mixing the systems.[7] The problem may arise only if the two principles lead to opposite results in each case, and full compliance with certain principles (*e.g.* making the right to make a statement without a party) may lead to a lengthy procedure, which clearly undermines the efficiency of the administration. How to ensure a balance between conflicting interests? In my view, by laying down well-defined principles which cannot backfire and have the opposite effect to that intended.

2. Methodology: Normative and Functional Method

The present research is based on a normative methodology, examining the European regulatory framework of the right to an effective remedy, standing on two pillars, the Council of Europe, and the EU. One of the cornerstones of the EU is the rule of law and respect for the fundamental rights on which it is based, as stipulated in Article 2 TEU. The implementation of

5 Fortsakis 2005, p. 210.

6 Millett 2002, pp. 312–313.

7 Hungary is rooted in continental tradition, *see* Péter Váczi, 'Fair and effective public administration', *Institutiones Administrationis,* Vol. 2, Issue 1, 2022, p. 167.

the rule of law at national level is crucial: it is the confidence of EU citizens and national authorities in the rule of law that allows the EU to develop into an area of freedom, security, and justice. EU law provides for severe sanctions for breaches of these fundamental values, and anyone whose rights under EU law are violated has the right to an effective remedy before an independent court. Of course, by choosing a European perspective, the Hungarian legislation cannot be ignored, either, and the theoretical underpinnings provided by the legislator and the law enforcer (Constitutional Court) are explained, through a review of the relevant literature. The basic premise of this is that the essential content of the right to legal remedy is the possibility of 'legal remedy', *i.e.* that legal remedy – within the framework of the given specific regulation – includes both conceptually and in terms of content the remediability of the violation of rights.[8] The presentation of the regulation of the principle cannot, of course, be an end in itself: it is essential to look at how these requirements are reflected in the legislation under consideration, whether EU legislation has been properly implemented and, if so, what further regulation might be required. In addition to the normative methodology, the functional method is therefore also used.

3. Results: How to Give Way?

Perhaps everyone agrees that green lights are better than red lights because they give you a clear path, rather than obstructing it. However, just think what would happen if we only had green lights in traffic. What would be the warning of danger if there were no red lights? And if all this were not enough, do we need yellow lights?

Perhaps the biggest issue is that European legal systems have traditionally paid great attention to the system of guarantees of judicial review, which of course serves as an important safeguard, but this pushed other legal instruments and other equally important principles (*i.e.* certain fundamental principles of the right to good administration) somewhat into the background. Case law certainly plays an important role in the development process of European law, but, by its very nature, it only provides for

8 For the practice of the Hungarian Constitutional Court *see e.g.* Decision No. 35/2013. (XI. 22.) AB, Reasoning [25]–[27], comparing the practice of the ECtHR, *see e.g. István Nagy v Hungary*, No. 121/11, 15 October 2015; *Shahzad v Hungary,* No. 12625/17, 8 July 2021.

case-by-case oversight rather than a complete and comprehensive system of guarantees. Therefore, it is necessary to build up additional control mechanisms and safeguards in administrative law, which, while ensuring legality, can make everyday administration both faster and cheaper.[9]

The green light theory is useful because it avoids excessive legalism in the pursuit of good administration. A legalistic definition of administrative justice would equate compliance with the grounds for judicial review, with a 'good' decision.[10] The red light theory can be seen to view the law as a matter for judicial cultivation and declaration; a sealed off regime of internal logic belonging to the judiciary. For green light commentators, judicial review needs to be viewed as a form of communicative legality, with the standards and principles identified by the courts eventually migrating to the administrative context, where they can be integrated proactively into everyday functioning and decision-making.[11] As Harlow and Rawlings say, legislation is prospective in the sense that it controls administrative activity by prescribing its bounds. Judicial review of an administrative action is primarily retrospective, although it possesses a prospective dimension. Lawyers assume and administration tacitly accepts that judicial rulings set boundaries for future conduct.[12] In my opinion, however, there is a golden medium way, as we will see under the amber light theory.

4. Discussion: Greenlights in Good Administration

4.1. The Traffic Lights Theory

"A greenlight is being kind to our future self. It's things in our life that affirm our way, they say 'go, proceed, more, please carry on."[13] The notion of traffic light theories in administrative law was first used by Harlow and Rawlings in 1948 in assessing the objectives of administrative law.[14] The

9 Solé 2002, pp. 1527–1529.
10 Fiona Donson & Darren O'Donovan, *Law and Public Administration in Ireland,* Clarus Press, Dublin, 2015, p. 22.
11 Id. p. 21.
12 Carol Harlow & Richard Rawlings, *Law and Administration*, Cambridge University Press, New York, USA, 2009, p. 40.
13 Matthew McConaughey, *Greenlights*, Crown, New York, 2020, p. 22.
14 David Stott & Alexandra Felix, *Principles of administrative law*, Cavendish Publishing Limited, London, 1997, p. 29.

theory can be approached from several angles and derives from several questions. *(i)* Should the courts intervene in the review of administrative decisions? *(ii)* Is judicial control over administration a weapon of sound administration or an obstacle to the administrative process? *(iii)* Should governmental actions be considered suspicious or congenial? *(iv)* Should law be superior to politics or on the contrary? *(v)* Are the courts and the rule of law the answers to everything, or are legal profession and law too old fashioned?[15]

On one hand, exercising its functions, public administration shall get a certain level of discretion. On the other hand, administration should not be left uncontrolled to prevent any potential misuse or abuse of those powers. When determining the role of judicial control over public administration with an intent to prevent abuse of power and to limit administrative discretion, there are two main schools of thought as to whether the actions of the executive should be subject to strict judicial control or mainly independent of it.

"Behind every theory of administrative law there lies a theory of the state." – say Harlow and Rawlings.[16] The red light theory advocates the idea of a minimalist state, in which the main function of administrative law is to prevent the abuse of state power and to eliminate *ultra vires* through various legal means, mainly judicial review. According to this view, administrative law is nothing more than the law of checks and balances on government power, which limits the executive to a legal framework while at the same time it protects citizens from abuses and the government's 'running amok'.[17] According to the red light theory, the courts are responsible for ensuring good administrative procedure, while the emphasis is on administrative law as a kind of external constraint on government control, through the independence of administrative authorities.[18] According to this concept, the courts and the administrative authorities are warring parties, the former using the weapon of administrative law against the latter in a battle over the abuse of government power.

15 Harlow & Rawlings 2009, p. 36.
16 Id. p. 1.
17 Jack Beatson *et al.*, *Administrative Law. Text and materials. Third edition,* Oxford University Press, Oxford, 2002, p. 2.
18 Juli Ponce, 'Good administration and administrative procedures', *Indiana Journal of Global Legal Studies*, Vol. 12, Issue 2, 2005, p. 554.

The exclusivity and importance of judicial protection has been the subject of many debates in the literature. Some argue that judicial review is not the only, or even the primary, factor in protecting the legality of public administration.[19] Must the courts or other mechanisms play a primary (or even exclusive) role in ensuring good administrative procedure?

This question led to a completely different approach which is the so-called 'green light theory'. Contrary to its name, it does not welcome unrestrictedly free state action.

> "While we have so far painted 'green light' accounts as eager to promote the effective use of government power, this should not be taken as implying that such scholarship is not critical of maladministration. Rather, it emphasizes the need to proactively design frameworks to avoid such negative practices rather than centre the subject upon the reactive, individualistic remedy of judicial review."[20]

Green light views of administrative law do not declare courts as the 'first line of defence' against maladministration.[21]

While the proponents of the red light theory favor judicial control over the executive, the followers of the greenlight theory tend to put their hope in the political process. They believe that the courts may become a barrier to progress, that their control is unrepresentative and therefore undemocratic, and that their influence must be kept to a minimum. But then, how can good administrative procedure be ensured? As for me, by setting guidelines and accountability. By laying down requirements such as transparent governance, ensuring access to information, and restricting discretion into a clear legal framework. These legal principles immediately bring about internal control in public administration, rather than external control such as judicial review. A further advantage is that while judicial review is retrospective, ruling on a specific decision, the principles of good administrative procedure are forward-looking, in the sense that they define the limits of the procedure and set the course for its conduct. Of course, the above two theories cannot be separated in such a clear-cut way; in reality, administrative systems recognize and bear in mind both, combining the

19 Paul Craig, 'A new framework for EU administration: the financial regulation 2002', *Law and Contemporary Problems*, Vol. 68, Issue 1, 2004, p. 108.

20 Donson & O'Donovan 2015, p. 25.

21 Swati Jhaveri, 'Localising administrative law in Singapore', *Singapore Academy of Law Journal*, Vol. 29, 2017, p. 833.

advantages of both systems, as an 'amber light'.[22] In my view, Hungarian legislation is also following this direction, since after the importance of judicial review gained ground after the regime change, the idea of good administration and its principles appeared in Hungarian literature after the turn of the millennium, and then at the highest level in the new Fundamental Law in 2011.

4.2. Redlights: The Importance of Judicial Review

"Courts are the primary weapon for protection of the citizen and control of the executive."[23] Binding government itself to the law (the rule of law) is a well-founded principle, requiring *inter alia* that all classes should be equally subject to the ordinary law as administered by the ordinary courts. The rule of law was to be protected by ensuring that individual public servants are responsible to the ordinary courts of the land for their use of statutory powers.

It shall be noted that in his initial works Dicey[24] was reacting to the French system of specialized administrative courts and he preferred to avoid such an approach, arguing that the 'ordinary' courts should handle cases, as in most respects the "relationships of citizens with public officials are not – and should not be radically different from relations between citizens and public bodies."[25]

This basic pre-requisite led to another important principle, the *ultra vires*, which holds that representatives of the state must exercise the powers conferred on them reasonably, in good faith, for the purposes for which the powers were conferred and without exceeding the limits of such powers.[26]

The redlight theory held deep-rooted suspicion towards executive power and sought to minimize the encroachment of the state on the rights of individuals.[27] Its major assumption is that bureaucratic and executive power of the state and its institutions, if unchecked, will threaten the liberty of all

22 Beatson *et al.* 2002, pp. 2–5.
23 Harlow & Rawlings 2009, p. 25.
24 Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution, 10th edition,* MacMillan, London, 1959, pp. 188–196.
25 Harlow & Rawlings 2009, p. 9.
26 Tom Bingham, *The Rule of Law*, Allen Lane, London, 2010, p. 60.
27 Peter Leyland & Gordon Anthony, *Textbook on Administrative Law*, Oxford University Press, Oxford, 2013, p. 5.

individuals. So, when public bodies or executive authorities exceed their powers, judicial intervention works as a sanction. This theory looks to the model of the 'balanced constitution' accommodating the judicial control of executive power as subject to political control by the Parliament through legislation of strict rules and to legal control through judicial monitoring by the courts.[28]

This theory is connected to the theory of state, which says that the best government is the one that governs least, since wider power means more danger to the rights and liberties of citizens. As Harlow and Rawlings write:

> "Behind the formalist tradition, we can often discern a preference for a minimalist state. It is not surprising, therefore, to find many authors believing that the primary function of administrative law should be to control any excess of state power and subject it to legal, and more especially judicial control. It is this conception of administrative law that we have called red light theory."[29]

Although traditional administrative law has not always been interested in making good decisions, it has certainly been interested in the judicial review of unlawful decisions. This is an old, somewhat negative approach, in the sense that it argues against arbitrariness rather than in favor of good administration.[30]

The possibility of reviewing administrative decisions and thus holding public administrations accountable is traditionally seen as one of the first and most fundamental steps against the arbitrariness of the executive. Where the law ends, tyranny begins, and judicial review is the most effective defense against oppression. The purpose of judicial review is to force the administration to comply with procedural rules, otherwise the decision will be annulled, and the courts thus indirectly ensure the enforcement of good administrative procedure, with maximum respect for the separation of powers. Judicial protection prevents the administration from acting rashly and hastily by forcing it to comply with fundamental constitutional and other legal requirements.[31]

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28 Harlow & Rawlings 2009, pp. 22–23.

29 Aberham Yohannes & Desta G. Michael, *Administrative Law*, Teaching Material, Justice and Legal System Research Institute, 2009, p. 15.

30 Carol Harlow & Richard Rawlings, *Law and Administration*, Butterworths, London, 1997, p. 29.

31 Solé 2002, p. 1520.

Judicial review can have a prominent role in disciplining administrative action by monitoring compliance with legal requirements during the procedure, thereby facilitating appropriate decision-making. Judicial review can take several forms, but the view that the procedural aspect of the case takes precedence and that, if such errors or deficiencies are found, the court does not review the merits of the decision has become increasingly obsolete. This solution, however, is increasingly resented by citizens, who feel that they cannot expect effective legal protection from the courts, as they feel that the merits of their case are not being advanced by judicial review.[32]

Looking beyond Europe, the landmark case of *Marbury v Madison*[33] decided by the US Supreme Court was the first case to recognize judicial supremacy and its exercise through judicial review. It is worth noting the specificity of US administrative law, in the sense that it traditionally allows for judicial review of administrative decisions, both substantive and procedural. The court has the power to annul a specific rule on the grounds that it is substantively wrong, but in most cases, this is not the route taken. It is not said that it should be repealed because it is wrong, but that it should be repealed because the decision-making process was not sufficiently open to stakeholders and society or because all relevant facts were not sufficiently examined. According to numerous authors, there are political rather than purely legal considerations behind such thinking. A judge cannot say that a decision made by a friend of the official is fundamentally wrong and therefore invalid, as this would be in open defiance of the government. Instead, he will say that there was a substantive error in the procedure that renders the decision invalid.[34]

4.3. Greenlights: The Primacy of Due Process

"Traditional administrative law emphasized the importance of judicial review, but this alone does not guarantee good administrative procedure."[35] Lawyers traditionally emphasize external control through adjudication since they look at administration from the outside. To the lawyer, law is

32 Id. pp. 1519–1520.
33 *Marbury v Madison,* 5 U.S. 137 (1803).
34 Martin Shapiro, 'Codification of administrative law: the US and the Union', *European Law Journal*, Vol. 2, Issue 1, 1996, pp. 36–38.
35 Solé 2002, p. 1506.

the policeman; it operates as an external control, often retrospectively. The green light theory is to minimize the influence of courts which were seen as obstacles to progress, and the control which they exercise as unrepresentative and undemocratic. Lawyers regard themselves as champions of the popular cause, but there can be little doubt that the great department of state are not only essential to the well-being of the great mass of the people, but also the most significant expressions of democracy.[36]

According to Dicey, questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.[37] The rule of law means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. "Englishmen are ruled by law, and by law alone."[38]

In contrast to the red light theory, a new perspective has emerged across Europe that focuses on the quality of the decision – in particular discretionary decisions – and emphasizes good decision-making and good administrative procedure. Accordingly, public administrations must not only be lawful, but must also make correct, appropriate decisions, because that is simply what people expect of them. That is why it cannot do nothing, even if it is empowered to do anything.[39] From this perspective, the rule of law's goal of consistency and certainty is merely one aspect of a regulator's task, and to pursue it as an absolute value is not realistic. In some senses, discretion will always accompany rules, with it being inevitable that judgments will have to be made in applying legal standards to factual situations.[40] The positive exercise of public power, not merely the procedural conditioning of its exercise, lies at the heart of the subject.[41]

The green light theory maintains that the use of executive power to provide services for the benefit of the community is entirely legitimate. Thus, the function of the courts in checking executive action is a questionable activity, however, it does not favor unrestricted or arbitrary action of the state, of course.[42] It underlines the importance of administrative (procedural)

36 Harlow & Rawlings 2009, p. 37.
37 Dicey 1959, p. 48. *See also* Jhaveri 2017, p. 832.
38 Dicey 1959, p. 202.
39 Solé 2002, p. 1506.
40 Donson & O'Donovan 2015, p. 12.
41 Id. p. 22.
42 Stott & Felix 1997, p. 30.

law to facilitate government action rather than intervening in it through judicial or political control. On this ground, principles of administrative law can be used as an enabling mechanism so that it acts as a weapon to the administrative bodies.

The issue of fairness is amplified in the context of judicial discretion within due process. As has been known since Plato, general rules never fully fit the specific facts for which they were created by the legislator. Perfect justice does not therefore presuppose perfect rules, but may be achieved by perfect discretion, whereby the legislator examines the social situation in question carefully and comprehensively, rather than mechanically applying the law as it stands, without fully examining the situation. Unfortunately, the perfect instrument of discretion is called into question by the imperfections of humans, who apply it in biased, unreasonable, and other inappropriate ways. The application of law in general can be described as an area of progression from discretion to written law over time. As social reality poses a new problem, the most appropriate first step would be to create an authority with appropriate discretionary powers, which is flexible and able to react quickly; in short, perfect for emergencies. However, as the flaws of deliberation are revealed, the focus shifts increasingly towards legislation, and the pattern can be described as follows: to do the job quickly through deliberation, and then to create the right rule, protecting citizens from the potential dangers of deliberation.[43]

In some cases, the decision of the administrative authority is clearly predetermined by the law, but in other cases the law gives the authorities a margin of discretion and merely sets limits within which the administration has a degree of discretion (*e.g.* when determining the type and level of punishment or measure in cases of misdemeanors). An administrative authority vested with discretionary powers must not only comply with the applicable law but must generally act in a fair and equitable manner. Discretionary power, in general terms, is when the public administration is empowered by law to choose from a range of legitimate options, and not based on 'legislation'.[44] This choice involves balancing public and private interests using non-legislative values to establish a general interest that is not defined by law. The choice itself therefore cannot be considered to have legal content, but administrative law must nevertheless ensure legal

43 Shapiro 1996, p. 31.
44 Ponce 2005, p. 553.

protection for such choices to protect the individual. It is from this latter perspective that the importance of judicial review as a means of protection against arbitrary decisions can be grasped.[45] Hence, a flexible law enforcement attitude may point in the direction of justice in the case of certain unreasonable or fossilized rules, but it is a double-edged sword since it can easily lead to injustice in the event of inappropriate application. The most sensitive area of discretion is the field of administrative law enforcement, and it is therefore essential that discretionary activity be conducted along certain legal principles.

If a given institution has a wide margin of discretion, some may already feel that the exercise of the client's rights can only have a limited influence on the decision, and that it is therefore a useless and burdensome obligation for the authority in such cases. At the same time, since it is precisely in this area that judicial control is the weakest (which in an extreme case will effectively be a purely formal revision), therefore the guaranteed role of procedural principles is, in my view, even more pronounced. This view is reinforced by the case law of the CJEU, which has pointed out in several judgments that the wide discretionary power of public authorities must not lead to the erosion of certain procedural principles.[46] In any event, the discretionary powers of the public administration must be limited, in accordance with the requirement of good administration deriving from the common tradition of the rule of law in the European States.[47] In the EU, the CJEU generally grants administrative authorities' wide discretionary powers, since it does not seek to substitute the administrative authority's decision with its own judgement, it only examines whether the procedural rules have been complied with by the acting authority, whether the facts have been properly established and whether there has been no abuse of power. This narrow scope of review makes the role of procedural principles particularly important. This view was confirmed in the *Technische Universität* case,[48] where the CJEU explained that, where the public administration

45 Solé 2002, pp. 1504–1505.

46 Eric Barbier de La Serre, 'Procedural justice in the European Community case-law concerning the rights of the defence: essentialist and instrumental trends', *European Public Law*, Vol. 12, Issue 2, 2006, pp. 241–242. *See also* Judgment of 2 September 2010, *Case C-290/07 P, European Commission v. Scott SA,* ECLI:EU:C:2010:480.

47 Giacinto della Cananea, 'Beyond the state: the Europeanization and globalization of procedural administrative law', *European Public Law*, Vol. 9, Issue 4, 2003, p. 568.

48 Judgment of 21 November 1991, *Case C-269/90, Technische Universitat München,* ECLI:EU:C:1991:438.

has such a power of appraisal, respect for the rights guaranteed by the EU legal order is of even more fundamental importance. Those guarantees include the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case, the right of the person concerned to make his views known and to have an adequately reasoned decision. Only in this way can the Court verify whether the factual and legal elements upon which the exercise of the power of appraisal depends were present.[49]

4.4. Amber Light: Balancing Between

"Leaving room both for courts and extra-judicial mechanisms to achieve good administrative procedure."[50] Initially, only the conception of red and green light theories existed. But, in 2004, two scholars, namely Wade and Forsyth shed light upon the amber element between the two theories.[51] The optimal solution can therefore be captured somewhere between the two, in the framework of a kind of 'amber' or 'yellow light' theory, which recognizes both the controlling and the reactive nature of administrative law.[52]

While the red and green light theories hold two different standpoints in administrative law, the amber light theory tends to bring a point of consensus between the two. It maintains that administrative law should apply the positive elements of both the theories, making a balance between both external as well as internal controlling mechanisms for effective public administration. The amber element between the two theories has somewhere been realized by green light theorists too. As recognized by Harlow and Rawlings, green light theory does not wish to suggest that it favors unrestricted or arbitrary action by the state. In fact, it doesn't rebut the rigidity of redlight theory to some extent.[53] In this way, the amber light theory is

49 Jurgen Schwarze, 'Judicial review of European administrative procedure', *Law and Contemporary Problems*, Vol. 68, Issue 1, 2004, pp. 94–95; Sabino Cassese, 'European administrative proceedings', *Law and Contemporary Problems*, Vol. 68, Issue 1, 2004, p. 32.

50 Beatson *et al.* 2002, p. 2.

51 William Wade & C. F. Forsyth, *Administrative Law,* Oxford University Press, Oxford, 2004, pp. 5–6.

52 Beatson *et al.* 2002, pp. 2–5.

53 Harlow & Rawlings 2009, p. 31.

a synthesis which combines the necessity for some control over administrative decisions with concern for setting good standards of administrative conduct, effective decision-taking, accountability, and human rights.[54]

5. Conclusions

"I found all the red and yellow lights in life revealed themselves to have at least a greenlight asset in the future. Red and yellow lights eventually turn green in the rearview mirror."[55] On the way home from work, it's best to catch all the greens. Is green also the winning color in administrative law?

Alongside judicial review, the issue of administrative procedural safeguards, which is in fact the general way in which the public interest function of the administration is carried out, is a key issue for good administrative procedure. The popularity of the principle that public administrations must follow well-defined rules to make the right decision has increased dramatically in recent decades. 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 reasons on which a decision is based is proof that the administrative authorities have acted appropriately, weighing all relevant interests, and taking all the data collected into account.[56]

The above issue is markedly different in English common law and continental legal systems. In the former, the fairness of an administrative act is matched by the possibility of being subject to a 'quasi-judicial' review at the time of its adoption, so that the authority has one eye on the possibility of a subsequent judicial review. This rather procedural approach to rights is closely linked to the institutional practice of administrative courts, which can perform functions that are elsewhere the responsibility of the government (*e.g.* remedies within the ministry). In the Anglo-Saxon tradition, once a decision becomes final, the right of appeal to the courts becomes more restricted, the legal basis for review is limited and the range of remedies available is reduced. By contrast, in the continental administrative legal system, the fairness of the procedure is guaranteed by the possibility of review by an independent judicial forum. The individual has the possibility

54 Leyland & Anthony 2013, p. 10.
55 McConaughey 2020, p. 22.
56 Solé 2002, pp. 1507–1508.

to challenge the administrative act, but in most cases, this is only possible after the administrative decision.[57]

Attempts to specify the administrative procedure in legal terms must never lose sight of the purpose of the procedure. The first and foremost aim of procedural law must be the realization of substantive law, in our case administrative (or other public) substantive law. Public law is at the service of social welfare and the public interest, and it is this objective that procedural law must ultimately pursue. The protection of individual rights is undoubtedly an essential objective, but it is inherently secondary to the public interest.[58] There is, however, a common intersection; good governance, which ensures both the protection of the rights of individuals and hence the protection of the interests of the social majority. Where do the values of good governance come from and how do they relate to administrative law? They can be traced back to two main Western traditions of public administration. *(i)* First, to the classical service model of public administration, dominated by the public interest. *(ii)* Second, to the new organizational principles of administration that swept through European public administrations in the 1990s, when the lean values of economics, such as efficiency, took over from more people-friendly principles.[59]

Examining the development of Hungarian law, in my opinion, a pleasant trend is the strengthening of the right to legal remedy and the rise of the elements of the right to good administrative procedure, their appearance at the constitutional level and their strengthening at the level of procedural law. In my opinion, however, the two guarantee systems cannot compete with each other, but a shield can be forged from the right alloy of the two, which can provide adequate protection for the client. The less prominent yellow traffic lights could therefore be the winning color for public administration.

57 Francesca Bignami, 'Three generations of participation rights before the European Commission', *Law and Contemporary Problems*, Vol. 68, Issue 1, 2004, p. 63.

58 Klara Kanska, 'Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights', *European Law Journal*, Vol. 10, Issue 3, 2004, p. 323.

59 Harlow 2006, p. 200.