

Premises for the establishing of the European Administrative Space

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Abstract

Article analyzes the premises which made possible the creation of a European Administrative Space in the European Union. Are researched the criteria for belonging to the European Space, the conditions for the existence of a European Public Space and the notion of the European Administrative Space. They emphasize the factors that can determine a unified transnational public law by analyzing the administrative convergences in Europe. Today we find that although the term and concept of law of public administration differ from one national system to another, it is possible an agreement on a common definition of administrative law, as a set of principles and rules that relate to the organization and administration management public and relations between governments and citizens.

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JEL classification: K23, K33

1. Belonging to the European Space

Underlying any new beginning is a system of values. The question is to discover the values that allow us to talk today about a country belonging to the European space.

Professor Andrei Marga believes that to speak of belonging to the European Space must distinguish: **Europe's geographic:** placing between the Atlantic and the Urals, which are devoted to the continent's geographical boundaries; **historical membership in Europe:** participation in movements that have given the continent's cultural and institutional forms, from creating polis, through contact with the Judeo-Christian tradition, modern revolutions in knowledge, economics and law, to defend the foundations of a free society; **institutional membership in Europe:** the embodiment of an open society organizations and specific legislation; **cultural affiliation:** cultivating an attitude in knowledge and practical life characterized by trust factual analysis and cultivating critical thinking. The same author believes that if distinctions are made honestly, then you have to admit that, in light of European unification process started after the war's geographic and membership historic decide not a European,

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which is now in question (see for example the case of Turkey which perspective can become an EU member). Geography and history are indispensable conditions, but European unification, a process primarily by institutional and cultural affiliation is examined considering European institutions and culture. Situated in geography and European history does not automatically generate a cultural Europeanness, as a cultural Europeanism can be found in countries that do not belong strictly geographically and historically, from Europe².

European culture contains a culture of efficient administration supported a culture of law characterized by personalism, legalism and formalism. Walter Hallstein considers that EEC is a phenomenon in three aspects of law: it is a creation of law, it is a source of law and it is the order of law³.

In the European culture the individual is subject, reference and scope of legal regulations. European civilization is essentially material embodiments of European culture.

H. R. Patapievici believes that articulate the idea of Europe was set up as a continental territory from time side and not the side from geography-as happened in a completely natural mode in the case of Africa or the Americas. "Europe is the mood that was set up by mobilization techniques of design time. You recognize the true European spirit after the capacity of the human enterprise to fit of the time after the talent to create over time and submit the time by virtue of maintaining what has been built by talent to make things take in time. Europe begins where technique is used to mobilize the time, to master the space⁴... "

Claude Delmas talks about a "European conscience" which becomes operational once it enters the interest of European realities about everyday concerns of the masses thus exceeding the philosophical plan and political options⁵.

2. The European Administrative Space component of the European Public Space

After François Guizot, European civilization is characterized by several features that distinguish it from all other - justice, legality, public space and freedom⁶. Through public space Guizot understand the existence of general interests, ideas public, briefly of society.

² Andrei Marga, *Filosofia unificării europene*, Publisher Foundation for European Studies, Cluj-Napoca, 2001, p. 26.

³ Walter Hallstein, *Gemeinschaftsrecht und nationales Recht in der europäischen Wirtschaftsgemeinschaft*, 1966, p. 542, cited by Andrei Marga, *op. cit.* (*Filosofia unificării europene*), 2001, p. 174.

⁴ Horia-Roman Patapievici, *Omul recent*, 3rd edition, Humanitas Publishing House, Bucharest, 2004, pp. 62-64.

⁵ Claude Delmas, *Histoire de la civilisation européenne*, Presses universitaires de France, 1969, Paris, p. 6.

⁶ François Guizot, *Istoria civilizației în Europa. De la căderea Imperiului Roman până la Revoluția Franceză*, Humanitas, Bucharest, 2000, p. 38.

European public space is under construction in terms of discovery and resorts internal legitimacy to govern. The concept of "European Public Space", yet elusive theoretical in terminology of the European integration will encompass and describe in a systemic manner, mechanisms, processes and complex phenomena that govern the development of public sectors and European administrations, highlighting the connections and the determinations of an administrative nature, economic, social or political.

Today it is noted that at European Union level, wants to create a public space allowing legitimizing transnational European institutions and the founding of a European collective identity. But certainly the conceptual definition of public space must be revealed in the light of the political unification of Europe, the political will, having a decisive role.

The conditions for the existence a European public space can be summarized as:

- existence of a Union based on law
- existence of Community institutions functioning of a democratic manner
- existence of an organized debate in public life based on the existence of means allowing all EU citizens to express themselves publicly⁷. The ways concerning the public debate and obtaining of the European public solidarity are yet to be invented⁸.
- existence of the frame allowing the concepts contoured after the discussions from public life to be enacted by public law.

The framework of the European public debate and citizen initiatives is designed currently in the article 11 of the Treaty on European Union. The principle of participatory democracy requires that EU institutions give citizens and representative associations the opportunity to make their views known and to exchange views publicly in all areas of Union action. Union institutions are obliged to maintain an open, transparent and regular dialogue with representative associations and civil society. In order to ensure consistency and transparency of the actions of the Union, the Commission should carry out broad consultations with stakeholders. At the initiative of at least one million EU citizens from a significant number of Member States, the Commission may be invited to make an appropriate

⁷ Définition de notions de la sphère de la Société civile 2002, par Jean Claude Boual, Paris / Horst Grützke, Berlin, Forum permanent de la Société civile européenne, www.europa-jetz.org, last consultation on 01/10/2016.

⁸ Dominique Wolton highlight recently: the French, for example, become aware of press, radio and television, of the latest news and debates concerning their country and the debate between supporters and opponents of European integration is not a European debate but a mosaic of debates in the bosom of each European countries. In addition, major European solidarity remains to be invented: the time when Northern Italy make fuss in supporting the efforts of Southern Italy to overcome backwardness, or the exclusions undermine unity of nations, a political Europe destined only economic impetus to sanction most favored European regions can expose the worst cramping corporate and nationalist – see Jean-Michel Besnier, *Conceptele umanității. O istorie a ideilor*, Lider Publishing House, Bucharest, 1996.

proposal on matters where citizens consider that it is necessary a legal act of the Union, in order to implement the treaties.

The European public law has the role to include the concepts contoured in the public debate. The Public law covering the constitutional law and the administrative law, remains the reference for European Public Space, some authors revealing true convergence between European administrations based on elements of public law: the European political systems have remained faithful to parliamentarism, the existence of parliamentary majority based on the discipline of vote, the practice exercised at national referendum, the decentralization, the existence of an administration of "career" and, especially, the European model of constitutional review⁹.

The chances of unifying transnational public law are maximized in case of nearby communities of states that demonstrates in general the same economic structure, social, cultural and political. These conditions are increasingly present within the European Union, it is legitimate therefore the hope that the move towards a "ius commune" over Europe can develop as well also in the public law domain¹⁰.

The European Communities were created to join efforts towards a first European economic space. As history shows, the European Communities were involved first in an economic market common, evolving then in the creation of the European Union institution which is not driven only by economic interests, but also by the desire to build social ties and political ties between European nations (as he had desired and signatories original Treaty of Rome). Today the European Union is not only a market for goods and services. Thus, the Treaty on the Functioning of the European Union (TFEU) in Title V talks about "Space of Freedom, Security and Justice", and some doctrinal works speak of a "European social space"¹¹. Lately doctrine speaks now about a "European Administrative Space". This is an exclusive creation of the doctrine, the notion is no such in legislation.

Reality shows that it is very difficult to talk in Europe about one way or model of public administration. Concerning the development of the European concept of public administration, Rutgers and Schreurs notes that public administration is still at the primary stage of conceptualizations and national approaches. In addition, there is almost no study about European public administration. What kind of government is addressed to the European area remains to be discovered¹². The notion of the European Administrative Space is more a creation of doctrine based on certain principles revealed by primary and secondary EU legislation.

⁹ Florin Bucur Vasilescu, *Constituționalitate și constituționalism*, National Publishing House, 1999, Bucharest, p. 14.

¹⁰ See in this regard Ioan Alexandru, *Drept administrativ comparat*, Lumina Lex Publishing House, Bucharest, 2000, p. 14.

¹¹ See Andrei Popescu, Nicolae Voiculescu, *Dreptul social European*, „Fundatia România de Măine” Publishing House, Bucharest, 2003, p. 209-213.

¹² Rutgers, Mark and Petra Schreurs, *Briefly Noted from Europe: Discovering the European Idea of Public Administration*, „Administrative Theory and Praxis” vol 22, No. 3, 2000, p. 621.

The public administrations of EU Member States although they have a very old structure, they have continuously adapted to modern conditions, including joining the European Union. The constant contact between civil servants from EU Member States and the Commission, the requirement to develop and implement the *acquis communautaire* at equivalent standards of reliability across the Union, the need for a system of administrative justice unique to Europe and sharing of principles and values of public administration led to some convergence between the national administrations. This was described as the "European Administrative Space"¹³.

The European Administrative Space can be understood broadly as a space of European public administration and may be the subject of administrative science, a multidisciplinary science, in its concerns entered the classical concept of *Staatswissenschaften* elements: public law, political science and public economics¹⁴. European structure can be analyzed from the perspective of these areas that are studied in different proportions also in the national university curricula¹⁵. In a narrow sense we can speak of administrative law governing this European space¹⁶.

The notion of European administrative space can be thought modeled on European economic and social space, being connected with the legal system-wide cooperation. Traditionally, a common administrative space is possible when a set of legal principles, rules and regulations are respected uniformly in a territory covered by a national constitution. Thus we can speak of each sovereign state administrative law. The issue a law on public administration which fits all sovereign states that joined the EU was debated intensely since the establishment of the European Community, but without reaching a consensus¹⁷.

EU Member States' legal systems are in a constant process of approximation in many different fields, under the guidance of Community legislation through the legislative work of the Community institutions and to the European Court of Justice. The EC legal concepts are introduced into national systems by directly applicable regulations or directives that determine adapt their

¹³ SIGMA Papers, no. 23, *Preparing Public Administration for the European Administrative Space*, OECD, Paris, 1998.

¹⁴ Wolfgang Drechsler, *On the Viability of the Concept of Staatswissenschaften*, „European Journal of Law and Economics” 12, 2001, pp. 105-111.

¹⁵ Sciences that studies related to public administration at national level are shown in the analysis made by Bernadette Connaughton (Department of Government and Society, University of Limerick, Ireland) and Tiina Randma (Department of Public Administration, University of Tartu, Estonia). They analyze the commonalities and differences in curricula of public administration in European countries, members of the EU or not in the paper *Teaching and Principles of Public Administration: is it possible to achieve a common European perspective?*, www.unpan.org/europe-analyticalreport-untc.asp

¹⁶ SIGMA Paper no. 27, *European Principles for Public Administration*, OECD, 1999, Paris: SIGMA-OECD; <http://oecd.org/puma/sigmaweb> (last consultation on 01/10/2016) treats the perspective of administrative law governing the European Administrative Space.

¹⁷ See SIGMA Paper no. 27, *op. cit.*, as well as Jürgen Schwarze, *European Administrative Law, Office for official publications of the European communities*, Sweet and Maxwell, 1992, p. 12.

legislation to EU specifics. These regulations can have a direct impact on Member States' administrative systems and can lead to significant changes in the applicable legal principles in public administration.

European Court of Justice can generate general principles governing a European administrative law. Jürgen Schwarze shows that in many cases the interpretation of legislative acts of the European Community, by the European Court leads to changes in the way principles of administrative law are applied in an EU Member State¹⁸.

We are thus witnessing to the Europeanization of administrative law.

3. European administrative convergences¹⁹

The convergence involves the reducing of the disparities between administrative systems²⁰, following identification of a portfolio of common features in the various European governments.

The convergence is not proposed as a matter of power and imposing a particular model. In this respect, American authors Woolcock and Pritchett conclude that in framework of development policies should be very careful when we use the assumption of certain rules or lessons with broad application that can be applied to public sector reform, project management or provision of services²¹. They underline the often dysfunctional mentality regarding "best practice" that a functional practice in a part of the world is immediately made public and recommended as a model to be followed in other parts of the world.

An European model of public administration is currently in the stage of ideal. There is no an administration type to which we can refer to as standard²².

According prof. Christoph Reichard of the University of Potsdam forces leading to convergence between national administrations in the Union are: the unified economic space which is crucial for the emergence of common administrative structures; a common legal structure developed by the Court of

¹⁸ Jürgen Schwarze, *Administrative Law under European Influence: On the Convergence of the Administrative Laws of the EU Member States*, Baden-Baden, Sweet si Maxwell, Londra, 1996.

¹⁹ See Cătălin-Silviu Săraru, *Capitolul 2 - Spațiul administrativ european*, in Ioan Alexandru, Cătălin-Silviu Săraru a.o., *Drept administrativ european*, Lumina Lex Publishing House, Bucharest, 2005, p. 95-145. Cătălin-Silviu Săraru, *Elementele componente ale Spațiului administrativ european în Tratatul instituind o Constituție pentru Europa*, „Caietul Științific” no. 8/2006, Juridical and administrative sciences section, publication of the Institute of Administrative Sciences "Paul Negulescu", pp. 131-142.

²⁰ Johan P. Olsen, *Towards a European Administrative Space?*, Online ARENA Working Papers, WP 02/26; Centre for European Studies; University of Oslo; www.arena.uio.no/, last consultation on 01/10/2016.

²¹ Michael Woolcock, Lant Pritchett, *Solutions when the solutions is the Problem: Arraying the Disarray in Development*, Washington D. C., Center for Global Development Paper 10, 2002, authors cited by Francis Fukuyama, *Construcția statelor. Ordinea mondială în secolul XXI*, Antet XX Press Publishing House, 2004, p. 90.

²² See in this regard Ioan Alexandru, *Administrația publică. Teorii. Realități. Perspective*, 2nd edition, Lumina Lex Publishing House, Bucharest, 2001, p. 605.

Justice; the constant interaction between the bureaucrats and politicians; a clear doctrine in most European countries in favor of a public action of better quality, as well as for administrative reform²³. However, a "European public administration" does not exist: although manifests a unique power in favor of integration, there are many differences of law, administrative and budgetary and fiscal policies; social and governance policies vary considerably and expectations of citizens are not standardized.

There are a limited number of systematic studies about "European administrative convergence". The concept is found mostly in public law studies and reports OECD / SIGMA related to the context of Union enlargement. It is noted, however, that there is no consensus in the literature about the existence of convergence vis-a-vis a common European model.

Nizzo, along with other authors, believes that there is an ESA, in which the space allocated for convergence to exceed that of divergence²⁴. Jürgen Schwarze believes that national administrative structures seem to manifest itself in particular resistance to European influence²⁵. The study undertaken by the latter author on public space of 12 EU member states reveal substantial structural differences between the systems of administrative law and he provides that the national administrative order not to lose features and dominant role in the near future.

The documents SIGMA notes, however, that the forces driving toward convergence lately gained speed and power. Increasingly more diversity of viewpoints is placed under European administrative standards. Johan P. Olsen notes that, although there is no *acquis communautaire* to regulate the "European public administration" (treaties do not prescribe a European administrative model), there was a **unofficial (non-formalized) acquis**²⁶. Thus Member States, despite having different legal traditions and different systems of governance, have developed a common body of doctrine and share the same principles of administrative law and standards of good practice and the need to deploy unified and effective EU law. An example of this is the European Ombudsman institution which through collaborative network with national ombudsmen has created a trend in European administration on administrative openness and transparency, the development of good administration and respect for human rights.

We see today that although the term and concept of law of government differ from one national system to another, it is possible an agreement on a common definition of administrative law, as a set of principles and rules that relate

²³ Christoph Reichard, presentation at the annual conference of the European Group for Public Administration, Potsdam, 2002, www.uni-potsdam.de/egpa2002/registration/Form%20A1.pdf

²⁴ C. Nizzo, *National public administrations and European integration*. Paris: OECD/Sigma, 2001, <http://www1.OECD.org/puma/sigmaweb>, last consultation on 01/10/2016.

²⁵ Jürgen Schwarze, *The Europeanization of national administrative law* in Jürgen Schwarze (ed.): *op. cit. (Administrative Law under European Influence...)*, 1996, pp. 789-840.

²⁶ Johan P. Olsen, *op. cit. (Towards a European Administrative Space?)*.

to organization and management of public administration, and relations between governments and citizens²⁷.

4. Conclusion

Today more and more talk about the **level of convergence in the administrative systems**, especially in connection with the integration of new countries into the Union. It assumes that a certain administrative system can be assessed by determining the level of the European administrative principles are applied both in law and in daily behavior of public authorities and civil servants. In this regard, the general administrative principles serve as standards for measuring trust in government, the accountability of civil servants and public authorities, the effect and sustainability procedures used in making decisions etc.

The extent to which different countries share and apply these principles is relevant for determining compatibility between their administrative systems. In other words, they serve as preconditions for better integration on the one hand and on the other hand, as measures of institutional structures of public administration capacity of a country to implement the *acquis communautaire*.

The conclusion that emerges is the following: the high degree of influence of the principles of European administrative upon national laws and the presence of these principles in real behavior of public actors (ie the level of implementation of the *acquis communautaire* formalized) are representative and are correlated with the ability of that country adopt and implement the "acquis communautaire" formalized. Observe so it is necessary to allow more attention to the actions of national public services because they are tools that ensure or prevent the transfer of these administrative law principles into public actions and decision making.

For candidate countries to achieve the standards required by the European Union is absolutely necessary to reform administrative law and procedural behavior and public services to comply with the administrative principles that relate to trust, predictability, accountability, transparency and efficiency. In addition, EU integration is a process of evolution. This means that a candidate must demonstrate a level of progress enough for there to be a satisfactory compared with the average level of the Member States of the European Union. The level of changes in 1986 (when Portugal and Spain joined the EU) changed in 2004 (when the Czech Republic, Hungary, Poland, Slovenia, Slovakia, Latvia, Lithuania, Estonia, Cyprus and Malta joined the European Union) and will be differently in the future when the candidate countries will join the European Union. This means that it is not enough for candidate countries to reach the current average level of the government now existing in the Member States of the European Union. It is necessary that they reach the average future Member States upon accession. In other words, a candidate must be able to overcome the difference between the

²⁷ J. Ziller, *Administrations comparees: les systemes politico-administratifs de l'Europe des Douze*, Montchrestien, Paris, 1993.

current government level and future average level of Member States when it is actually a member of the European Union.

The evolution of EU legislation requires that candidate country to constantly assess the degree of compliance of its legislation with the *acquis communautaire*. There are various mechanisms that can measure the degree of convergence at a time. Thus, for example, compliance of national legislation with the Community can be achieved by two major processes: the transposition of EU legislation into national law and the compatibility of national legal acts transposing the *acquis* to the provisions of the Union²⁸.

EU legislation is a promoter of modernization of national laws. European Union's role is to act as a means of inspiration and confidence, working as an acceleration factor of change in Member States.

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²⁸ Augustin Fuerea (coord.), *Evaluarea gradului de concordanță a legislației române cu acquis-ul comunitar, la nivelul anului 2002, pe capitole de negociere. Studii de impact II*, European Institute of Romania, 2004, p. 13.

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