

CHALLENGES OF THE EU ADMINISTRATIVE SPACE: CONVERGENCE OF NATIONAL ADMINISTRATIONS TO THE EUROPEAN ADMINISTRATIVE LAW

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Abstract

Since their creation, back in the 1950s, the three European Communities (later known as the European Union) have constantly evolved towards a stronger union and towards the establishment of various common or shared 'spaces'. Frequent references to the European space or the use of concepts like 'space of security and freedom' stand as a proof of the will of the member states and the European institutions to strengthen their cooperation. Along the same lines, the reference to the European administrative space has become an integrant part of the European political discourse and agenda. The progressive enlargement of the European Union has brought about the necessity to ensure the harmonization of the national administrative law and procedure with the European administrative law, within a common, administrative space.

The existence and characteristic features of a European administrative space form the subject of intense debate and of a rich scientific literature. The present article intends to make its contribution to this debate, analyzing and presenting some of the most relevant theoretical findings concerning this topic and highlighting the challenges that both the national administrations and the European institutions has to face in their effort at finding the right ways towards a European model of administration.

Keywords: *Public Law, European Administrative Law, European administrative space, national administrative law, convergence.*

Introduction

The notion of 'administrative space', which in recent scientific literature has been mostly referred to as 'European administrative space', has been created within the conceptual framework of the European governance system. The scientific literature in the field displays a great variety of approaches to the European Union's institutions and the European space, with the latter viewed as an institutionalized social space where various actors work together to create,

implement, interpret and impose the respect for a system of rules [1]. In this context, the notion of 'European administrative space' refers to a particular set of aspects of the phenomenon of regional integration and is used to describe the administrative dimension of the construction of the European governance.

From a historical perspective, even if it was not formally inscribed in the founding treaties, the concept of 'European administrative space' originates back in the 1950's, when the first communities were created and the first three original treaties of Paris and Rome were signed, with the fundamental aim of creating an economic and political system of governance. This original system of integration which has known ever since a continuous growth and deepening of the cooperation between its members, is considered to be still imperfect and still prone to improvement, since it has its own political, economic and juridical institutions, but not proper administrative ones, with the exception of some agencies and the services of the EU Commission [2].

The subject of the present article offers the possibility for an interdisciplinary approach because of its multidimensionality. The concept of European administrative space invites to an integrate investigation and reflection, carried out from different perspectives. The qualitative analysis of the most relevant scientific literature in the field and the comparative method will be the main tools of our research which aims to contribute to the debate about a 'European administration model', the fundamental objective being to discern its main characteristics and principles.

1 THE 'METAPHOR' OF SPACE IN THE EUROPEAN INTEGRATION

The European administration, which has become in time increasingly complex, has often been defined by the famous metaphor of 'space' [3]. As a result, the use of the concept of 'European administrative space' is more and more frequent, and researchers have remarked that despite its being contested by some, it has nevertheless gained its own 'right' to be inscribed on the list of EU specific terminology.

The analysis of its meaning by comparison with other syntagmas, reveals the fact that the term 'space' has been used in the field of social sciences to refer to a certain category of relationships which are specific to a certain social domain, in the sense that they determine and are determined by that particular domain. Pierre Bourdieu, for instance, considered that the social world may be represented as a 'space' - 'On peut représenter le monde social sous la forme d'un espace (à plusieurs dimensions)' construit sur la base des principes de différenciation ou distribution/ 'The social world can be represented as a space (with several dimensions) constructed on the basis of principles of differentiation or distribution constituted by the set of properties active within the social universe in question' [4]. In his turn, Christian Jacob defines space as 'a set of mental, discursive,

technical and social procedures which enable groups and individuals to make sense of their surrounding world' (in the original: 'ensemble de procédures mentales, discursives, techniques et sociales, par lesquelles... les groupes et les individus ... donnent sens au monde qui les entoure') [5]. Another innovative view of space is presented by Martina Löw who defines it as a relational concept. 'Space' as a relational notion is shaped by the interconnection of material, social and symbolic dimensions and is constructed in the interaction between objects, but also between structures and actions [6].

These symbolic aspects of the term can be certainly attributed to the European space where the construction of the communities and the elaboration of the European law, including its administrative branch, have taken place along several stages. Certainly, the concept has been used on various occasions and it is considered as 'a common metaphor to describe integration phenomena' in the European context' [3]. For instance, space can be found within discursive constructions such as, 'European Constitutional space', 'European judicial space' ('l'espace judiciaire Européen') or 'area of freedom, security and justice' which in French is translated as 'véritable espace de liberté, de sécurité et de justice'. It is interesting to note how the English term 'area' is rendered in French by the term 'espace' - space. Analysing the expressions in which the word 'space' appears, we retain that the 'European Constitutional space' refers to the sphere of shared constitutional values between the EU and the member states. The notion of 'European judicial space' was first introduced by Valéry Giscard d'Estaing, in the 1970's and became rapidly very popular [7]. The other construction is included in the Lisbon Treaty, in Article 3: 'The Union shall offer its citizens an area of freedom, security and justice, without internal frontiers'.

The concept of European administrative space, as it is known today, is used to describe, first of all, the European administration which in the beginning was organized at two levels: the European level and the national level of the member states. At the level of the Communities, the law was enforced by the Commission, whereas at the national level, the states were responsible of their own administrative law and procedures, according to the principle of the 'procedural autonomy' [8]. This type of administration was called 'mixed' or 'shared' administration and was described as 'direct' when was performed by the European institutions and 'indirect' when was performed by the national states [8]. This relatively simple organization will become in time more complex, due to the two facets of the integration process, namely its enlargement and its deepening. The enlargement of the Communities and the European Union, subsequently, meant the increase of the number of the member states with the accession of new countries. The deepening of the integration process has been realized by the adoption of various treaties which constantly consolidated the European institutional framework and extended the area of communitarian intervention, translated as a constant addition of new competences to the European Union.

As a consequence, the evolution of a European administrative space appears inseparably related to the principle of deepening the EU integration because the consolidation of the integration principles and the ever-growing union between the member states has also taken place in the administrative field. Moreover, the constant progress of the integration has brought about the development of forms of mixed administration or co-administration within the shared European space, a fact which engendered the multiplication of the relationships between the administrations [9]. It is thus understood that the concept of space is closely related to the creation of durable relationships between the national administrations which are required to implement the EU law. These 'functional interactions' are associated with 'material interactions' between the member states and this determines an agreement of the norms that are applied to their administrations [9]. It is also important to note that the general principle that stays at the basis of the cooperation between the states, and which holds valid in the administrative area as well, is the principle of 'loyal cooperation'. According to this principle the states are bound by the general rule that their relationships do not endanger the objectives of the European construction. The loyal cooperation means also the obligation of the states to an active cooperation between their national administrations which are called to implement the EU law [9]. This active cooperation is mentioned by newer rules introduced in the reformulated Art.4 of the Treaty on the EU (TEU, also Maastricht Treaty). In this sense, the national authorities, especially the administrative ones, have to ensure the respect and implementation of the EU juridical order. The obligation of cooperation is further consolidated by the newer ways of implementation of the EU law which besides the decentralized execution, introduced other forms of co-administration. The multiplication of co-administration modalities highlights the principle of cooperation between the administrative authorities at various levels of the administration [9].

One can observe that in parallel with the deepening of the integration, new forms of cooperation in the administrative domain have been established and some of them have even been institutionalized. Such is the case of the agencies which have made possible a sustainable and permanent cooperation between the EU administration and the national administrations [9]. These agencies have been set up in the field of joint competencies where the member states continue to have the right of application of the EU law. Furthermore, new forms of cooperation between national administrations and the EU have been proposed and introduced by the Council and the Parliament

The relationships between the national administrations represent a fundamental factor in the creation and organization of a European administrative space, consolidating its structure. Another very important factor remains the closer cooperation between the states which triggers a third one, namely the convergence

of the norms that are applicable to the national administrations in order to ensure unity and harmony in their relationships.

2 THE PRINCIPLE OF 'ADMINISTRATIVE CONVERGENCE'

The reference to a 'European administrative space' is considered to be a constitutive part of the integration programme and one of its fundamental principles is the 'administrative convergence' viewed as an objective to be met by the national states within the European framework. The factors that ensure this convergence are specific to the European administrative space and can be identified from the analysis of such documents as the Sigma Papers (1999) which was among the first documents that officially defined the 'European administrative space' and its principles. One of the main features of the administrative space established by this report is represented by the 'shared mandatory standards of administration' as defined by the European Court of Justice. These standards are considered to have a 'harmonising potential' which is not translated into practice by the existence of 'administrative institutions' that should be 'homogenously' set up across the EU member states'. This statement has to be simply interpreted in the sense that 'national public administrations must recognize principles and adhere to standards that are shared by EU member states'. According to the report, the 'EU administrative space' is set up by the 'institutional arrangements, processes, common administrative standards and civil service values' which appear as the definitory factors for a common administrative space. Another expression formulated by the Sigma Papers in relation with the administrative space is the 'Europeanization of national administrative law' which may be considered another expression of the desired administrative convergence.

In its general acceptance, the term 'administrative convergence' designates the reduction of disparities and differences between the national administrative systems: 'different administrations develop along the same path in a way that produces homogeneity and coherence among formerly distinct administrations' [10]. Interpreted in the sense established by the Sigma Papers, the 'homogeneity' and 'coherence' have to be understood as relative, and not as an ideal path or model of administration, since the states are required to make efforts to adopt and apply common standards and not impossibly to attain ones.

In fact, the European space is characterized by a great variety of features that may stimulate or hinder the development of a consolidated integration. Convergence is thus broadly understood in terms of a concordance between EU law and principles and national juridical orders. The European administrative space includes a set of common standards which are defined by law and applied through procedures and accountability mechanisms. The administrative convergence is a result that has to be attained within the interaction between national political-administrative systems which are sometimes quite different, due

to their different historic tradition and evolution of public administration and economic development. It results that the European administrative space is not based on the principle of 'unification' or of the implementation of 'identical national standards for administrative organisations and procedures', but on the principle of 'harmonisation of the administrative bodies' [11]. The standards or values that have to be respected and followed by public actors at the national level of their public administrations, and which are determined by their belonging to the administrative space, are the following: provision of legitimate legislation, rightful actions, open and transparent execution of power, accountability, which have to be backed up by a wise and efficient use of resources and responsible professional behaviour that ensures the accomplishment of the proposed objectives [11].

In practice, it has been observed that the evolution of the European administrative space has been rather 'inconsistent' and 'fluid', in both Eastern and Western European countries, with a greater number of difficulties in the Eastern ones [12], caused, mainly, by the numerous challenges they had to face in their transition from centralized political-administrative systems to democratic ones. Nevertheless, the integration of the member states into the administrative space has known several stages which have marked a progress and a consolidation of their cooperation in the field of public administration. The first stage was the implementation of shared values, followed by the stage of the institutional cooperation and, then by juridical harmonisation, which led to a last or current stage of multilevel governance [12]. Specialists in the field sustain that the emergence of the administrative space may be broadly analysed as a process with two complex phases, which was initially defined by the convergence of administrative systems, and then by a further evolution which engenders the 'development of new institutional constellations and configurations' [13].

These stages of evolution have also led the integration to a new level, characterised by 'more integrated law making and implementation processes' in various policy areas, regardless of the territorial criterion that limited the exercise of public policies within strictly territorial boundaries. There has also been an 'opening-up' of the political-administrative systems of the member states, both 'vertically' and 'horizontally'. Vertically this opening means that the countries have already assimilated the principle of the application of the EU law within the member states, whereas, horizontally, the states have admitted a 'de-territorial application of legal acts of other member states', that is beyond the territorial borders [14].

The most significant effect of the settlement of a European administrative space is the spreading of shared standards and 'best practices' and the development of the 'capacity building processes at all governance levels' [11]. The fundamental principles promoted within this shared administrative space and applied by the national administrations have led to a greater convergence of

traditional models and institutions of public administration and of the administrative law, as well.

3 THE EAST-CENTRAL EUROPEAN COUNTRIES AND THE ADMINISTRATIVE CONVERGENCE

The East-Central European countries form a group whose history and tradition in public administration had a strong impact on their journey towards the EU membership. The scientific literature in the field highlights the close connection between the construction and settlement of the European administrative space and the accession of these countries to the EU, stating that the idea of a European administrative space began to take shape with their application for membership back in the 1990s [15]. One of the conditions that the would-be member states had to fulfil had been that they should have a sufficiently developed administrative capacity in order to implement the *acquis*. The emergent common set of rules and standards by which the administrations of these countries were brought into alignment with the European administrative law and practices has been referred to ever since as the European administrative space.

Looking at the documents that had a decisive influence on the establishment of criteria that contributed to the settlement of a European administrative space towards which the East-Central European Countries had to evolve, scholars mention the papers elaborated by SIGMA and their guiding role, the Copenhagen criteria of 1993 (establishing the conditions of eligibility of a country for the EU accession), the Madrid Treaty (which introduces the requirement for adaptation of judicial and administrative structures so as to be capable to transpose the EU law and apply it); the Helsinki Treaty of 1999 (imposing the obligation of candidates to assimilate the values and goals of the European Union as defined by the treaties) [15]. All these documents set out the framework of a true administrative space that together with an ever-growing *acquis* had a lasting impact on the transformation of national administrations of the East-Central European Countries. It is remarkable how the governments of these countries made efforts to elaborate and implement a huge number of laws that changed the image and organization of public administration of their countries for ever. The European administrative laws and policies had a strong impact on the administrative styles and structures of the candidate states determining a certain degree of 'Europeanization of national administrations'.

Through the elaboration of papers that constitute a true code of EU administrative standards and principles, the SIGMA actions were targeted at the development of indicators which can be used as tools that measure the success of administrative reforms. In this respect, SIGMA published over fifty papers and other documents that serve as a guiding corpus. Among the standards codified in the SIGMA papers the most significant are those referring to: civil service

legislation, the content of constitutions, public internal financial control, budget and public expenditure management, administrative procedures, policy making and coordination, public integrity, external audit etc. [16]. Added to this process, there have been the EU institutions' efforts to define the main areas that require administrative reforms, together with EU efforts concerning the codification and supporting of 'good European governance principles', administrative and juridical standards and best administrative practices. It is considered that the next step for a further consolidation of the European administrative space was marked by the adoption of the Charter of Fundamental Rights and the effort to prepare the first European Law of Administrative Procedure [16]. In January 2013, the European Parliament adopted the Resolution 2012/2024 which states that a Law of Administrative Procedure could foster cooperation and stimulate the exchange of best practices between national administrations and the EU administration. In June 2016, a new Resolution for an open, efficient and independent European Union Administration was adopted and consecrated the principles of lawfulness, non-discrimination and equal treatment, proportionality, impartiality, respect for privacy, transparency and efficiency [17].

Considering all the progress that has been made toward a juridical consecration of the European administrative space, it can be stated that its role in stimulating the administrative reform in the East-Central European countries has been a great one. It can also be stated that there have been other incentives for the reorganization of national administrations of these states, but the process would have been even slower without the pressure exerted by the European institutions and processes. Nevertheless, the challenges that they had to face have been important, given their different modes or styles of administration and the lack of resources and sometimes uninspired strategies or laws adopted and applied. Some of the countries in the region have been faster and more eager to adopt better and more modern ways to improve public administration, embracing innovation to a certain degree and becoming leaders of the administrative reform (for instance, Slovakia, Lithuania and Latvia), whereas others have not proved consistent, willing or powerful enough to pursue the path of modernisation. One of the most disappointing tendencies is the formal acceptance of the Europeanisation of administration, which may be called the 'formalistic approach' or 'superficial Europeanisation' [16] and which manifests as a merely juridical transposition of the *acquis*, and not as a profound assimilation of European standards and values. A real assimilation of the European *acquis* would lead to a deeper transformation of both administrative laws and institutions, on the one hand, and, on the other hand, to a change of mentalities and social relations and institutions.

Another challenge is represented by the effects of corruption. The negative effects of a lack of public integrity and of the relatively high levels of corruption have led scholars to remark that 'a decrease of the corruption level will lead to an increase of the governance efficiency' [18]. Unfortunately, Romania finds itself in

the latter category, and it can be said that the process of Europeanization despite its really 'life-changing' contributions, could not supplant the role of the political and administrative institutions that should have been more determined and more willing to envision and implement a proper administrative reform. Despite the loudly announced measures meant to transform and re-organise the administration, the government has applied a totally unexpected set of strategies which is (at this very moment) throwing the whole country in a crisis which threatens the already hard-pressed economic situation and the decent citizens' financial resources. Another concerning issue is the interminably delayed adoption of the promised Administrative Code and Administrative Procedures Code, which are mentioned in the *Strategy for the Consolidation of Public Administration 2014-2020*, approved by the Government Decision no. 909/2014. In the current context, Romania's advancement on the path towards a profound change of mentalities and reform of administration seems to meander further apart from the European model.

4 CONCLUSIONS

The European administrative space has become a significant concept in administrative theory and emphasizes the convergence of the national administrations towards a European model of integrated administration. The European administrative space entails the harmonisation of national administrations and national administrative law, a process that takes place vertically (towards the EU level) and horizontally (between the member states). One of the values that is characteristic of this space is the existence of a high quality public service that is the same or similar in all its member states. This quality has a positive effect, maintaining the citizens' trust that they will enjoy a better life and equal, non-discriminatory treatment from the European authorities and national authorities.

The main challenges to an even settlement and development of the European administrative space are caused mainly by the following aspects:

- great variety of the administrative models and traditions specific to the political-administrative systems of the EU member states;
- different levels of economic and social development and delays caused by particular phenomena related to the 'post-socialist' phase of societies in Central and Eastern European states;
- different experiences determined by lack of administrative capacity, progressive but inconsistent reform, as well as different approaches and pace of the administrative reform in the East-Central European countries;
- 'formalistic approach' or 'superficial Europeanisation' which means that there is only a formal transposition of the *acquis* and not a deeper assimilation of the European administrative standards and principles.

The emergence of a European administrative space has been constantly supported by the EU, a fact that had a positive influence on the Eastern and Central European countries and on all the member states in general. There has been an evident progress in individual states in the field of administrative services and procedures. Nevertheless, there is yet much to be done by many of the national administrations, particularly with regards to the application of the transparency and accountability principles. At the same time, the recent economic crisis put to test the governments of the EU member states which responded differently to this global phenomenon. Thus, the construction and application of an integrated model of administration remains still a common goal to be attained, hopefully in the years to come. The strongly determined countries which proved their will to transform and adapt to the new economic and political situation are well advanced on their way towards European standards and values of public administration, whereas for the countries which are struggling hard to find their way in harsh economic conditions and political instability, this desideratum seems to be hard to fulfil.

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