European Administrative frame and its developments

Besim Halimi

Abstract

The object of this paper is the implementation of administrative European law and the role it plays in the legislation of member states. Considering the future prospects it is possible to predict the trend towards written and codified European laws. The interaction between unwritten legal principles and administrative law, as it exists in national law, can be identified in community law. This is one of the peculiarities of administrative law in general that appeared more often in unwritten legal principles form, developed by the courts. At a certain stage, they are transformed into an administrative written law. Furthermore, the general principles of administrative law can be used even when deviant opinions about management occur between old and new Member States, except for those related to the fulfillment of possible gaps. Main purpose of the paper is to answer this question: *What is the space that the European administrative law occupies in the internal legislation of each Member State?*
The methodology is based on judicial practice and court decisions in different countries.

Keywords: European Union, rights, freedom, law, administrative principles.

Introduction

By analyzing the division of competences in the field of administrative law in the EU system is evident that there are not significant changes from the current legal system of the Member States. In general, Member States are responsible for implementing EU law, with the exception of some restricted areas that are managed directly. Therefore, the administration is generally led by legal rules and principles of the Member States. The European Court of Human Rights has restricted this general rule in two ways:
- First, the indirect execution of European law should not lead to different treatment compared with the application of national law.
- Second, the scope of European law during its implementation should not be distorted. Even the Draft Constitution of the European Union[1] did not change the traditional rules of the European administration. Considering that it does not create any new administrative authority, the general rule of Article 9 paragraph 2 has to be applied. After that, *"powers not given to the European Union in its constitution remain at the Member States"*. In addition, as mentioned above, the general principles of interpretation developed by the European Court of Justice will apply in accordance with Article IV in the future. The draft constitution contained an innovation in Section 185 of Section III, which explicitly regulates the process of administrative cooperation within the EU. Administrative cooperation will be considered more important than ever for a Union of twenty-five (now 28) Member States, in order to ensure the internal coherence of the EU. Problems arising from differences between Member

[1] In 2009, EU attempted to adopt a European Constitution, but it was not voted by all states. Therefore it remained only as a project.

States are a major reason why, institution building has such a high priority in the process of enlargement towards Central and Eastern Europe. Candidate countries need to develop their administrations to reach the reliability level of the European Administration and an acceptable threshold of shared principles, procedures and administrative structural arrangements.

EU integration is an evolving process (principle of progression in the construction of the EU. This means that a country should show a sufficient progress to consider itself at the average level of EU Member States. The institutional, administrative and economic operating level which must be achieved by a candidate country, in order to be considered ready for membership in the European Union[2] is called "The Level of Convergence". Naturally, for a country like Albania with unconsolidated institutions and major functional problems, convergence topic constitutes a fundamental element that will slow the fulfillment of the conditionality level of pre – adherence.

It is unlikely that the national administration of a member country, implement and enforce national laws implementing the principles and standards which differ from the principles and standards required to be implemented during the implementation and enforcement of European law, namely the *acquis communautaire*. Although formally the European administrative area is not considered as part of the *acquis communautaire*, it should serve as a guide of administrative reforms in countries that apply to join the EU (Pollozhani, Dobjani, Stavileci and Salihu 2010, 86).

When a Member State fails to implement the EU law as provided in directives and regulations will necessarily have an important legal consequence. The State is responsible for non-contractual liability by unlawful failure to transpose an EU directive or to apply an EU regulation. This provides sufficient grounds for an individual to sue the state for damages. The lack of a formal legal body regulating public administration, its procedural rules and its institutional arrangements, does not mean that European supranational administrative law is meaningless or unknown to EU member states. There is a common *acquis* consisting of administrative law principles, which can be called "non-formalized *acquis communautaire*" in the sense that there is no formal convention. However, it may represent up to some extent a general administrative common law.

Principle of National Institutional Autonomy

The European Court of Justice has imposed a general obligation for administrative authorities of the Member States. When a national administrative authority finds that, between a provision of national law and a provision directly effective European law there is a conflict - provisions cannot be applied both at the same time - the authority is obliged to solve this problem in favor of the provision of European law. On one hand, European law carries the traditional rule of international law that member states should be considered as subjects towards the fulfillment of EU law. This means that member states have a responsibility towards the European Union for the correct implementation of the European legislation. The internal structures of the member states and their competences

[2] See the European Court of Justice Decisions in cases C-6/90 and C-9/90 "A. Francovich against Italy ", 1991.

are not an EU concern, as this would violate the main principle of the national institutions autonomy. European law carries the traditional rule of international law that member states should be considered as subjects in the fulfillment of obligations deriving from European law, as they are party to the establishing Treaties of the European Union. The Member State must ensure that the result required by the relevant provisions of the Treaty or secondary legislation has been achieved in the national legal order. This also applies to federal states. In case of the law on liability for violations of European law it is clearly defined the traditional approach of the Court. When obligations are not met, the state itself is responsible, and not its individual organs, as the Court clearly noted in its decision in *Brasserie du Pecheur.*[3]

Obligation on the national administration

Besides the direct and indirect administration, Community legislation has developed a wide variety of systems for the development of administrative organs, causing overall growth sectors, which are characterized by the coexistence and interdependence of international and national level.

If we refer to one of the oldest examples, namely the European administration to environmental information, is evident that it is mainly governed by the law of 1990. In the frame of environmental information, recently, are being discussed the EU proposals for the establishment of European administrative institution for consumer protection and a European administration for civil protection as originally introduced by the Commission in 2003. It is a complex and differentiated phenomenon, known today as characteristic of European administrative law, which is the institutional interaction between the central administration in Brussels (or other administrative centers of the EU) and the existing administration of Member States. Compared to the discipline of the administrative procedure, the development of so-called "general system of administrative coordination" has involved the connection and coordination between procedures of the bodies depending on the Commission and national procedures. In other words, composed procedures are characterized by the intervention of Member States governments and European authorities, as well as the "representatives" offices of the two types of organisms. The regulation of these processes varies significantly from sector to sector, from the power of decision to the intervention of international and national government.

The role of central governments in the implementation of EU law by national administrative units

Referring to the principle of national institutional autonomy, each member state has the authority to define independently its own internal organization (Jans, 2007, 18). This case involves the separation of powers and duties between administrative authorities in all Member States.

Consequently, any administrative authority, in case of conflict with the provisions of European law, is obliged to set aside provisions of national law which conflict with them by not applying them. Furthermore, Member states have the obligation to

[3] Case C-46/93 dhe C-48/93 Brasserie du Pecheur, 1996, ECR I-1029, par 34.

actively promote the implementation of European law. Given the fact that Member States are responsible for any violation of this obligation towards the European Union, leads to the question of whether Member States are able to supervise their administrative authorities?

If there are sufficient competences at a central level to supervise administrative authorities within Member States in this frame, we can accept that Member States are themselves responsible for the correct implementation of European law. However if the supervision options are very limited, a clear conflict may exist at the national level. It is crucial to clarify the possibilities of supervision by the central government concerning acts or decisions adopted by administrative authorities. In other words, the possibilities of supervision are related with cases in which the central government will be required to force an independent administrative authority (local or central) to amend an act or adopted decision, in order to not apply a national law in favor of a directly effective provision of EU law, which has inconsistent provisions with the national law.

European legislation on public contracts and its adoption in the Albanian legal system

Public contracts are an important part of the activity of public administration. They have important economic effects in financial markets, public services, governance etc. In this area the European Union (EU) has played a unifying role in providing the relevant legal provisions, especially in the areas of public procurement. The most important legal provisions that should be mentioned are:

a) Directive 2004/17 / EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of the organizations that operate in services sectors of water, energy, transport and postal services (30.04.2004);

b) Directive 2004/18 / EC of the European Parliament and of the Council of 31 March 2004 coordinating procedures for the granting of public works contracts, public supply contracts and public service contracts (30.04.2004).

Albania has ratified the Stabilization and Association Agreement with the EU thus is harmonizing its legal structure with the EU legislation and the *acquis communautaire* of the EU. Since the countries of Southeast Europe are trying to join the European Union in the near future, the above legislation or possible future modifications of EU legislation will have to be applied directly in the domestic legal system of Albania. This legal outsource will rise for discussions various issues related to their implementation. According to the Albanian Constitution, international law is superior compared to domestic law. Also, as defined in Article 123 of the Albanian constitution, international organizations can produce legal norms that should be applied in the internal legal system. As a general rule, a valid law should be applied directly from the internal state bodies as courts or Public Administration. Therefore the above mentioned directives of the EU on Public Procurement should be applied directly.

If an administrative act, based on domestic law is contrary to the provisions of the law generated by the European Union then this will define its invalidity and consequently the invalidity of the contract. Also, a special system of community supervision constitutes the basis for the functioning of public procurement and granting concessions.

Conclusions

European administrative frame includes a set of common standards for action within public administration which are defined by law and enforced in practice through procedures and accountability mechanisms.
This short analyzes leads to conclusions summarized below:
- In the first place, the relation that takes place between the National Administrative Law and the EU administrative law in the context of "general European systems" is characterized in four ways: first, the partial symmetry of the procedures of local authorities; "contagion" that defines operating methods between the national authorities and the EU counterparts; Then, the space left for national rules; last, horizontal "contagion" between Administrative Law that varies by member states.
- Secondly, this technique of European law intervention on domestic administrative systems led to vertical convergence between domestic administrative law and EU administrative law. This convergence cannot be separated from the administrative experience of member states, in which are based the principles developed by the judges of European Court and are implemented through regulations of relevant topics of EU. Instead of a "harmonization" of EU procedural law, it creates a homogenization of procedural standards, where the EU law is created, often by the ability of administrative procedural domestic law, to investigate and develop institutions of community law.
- Thirdly, the technique that has emerged is a considerable flexibility. Depending on the dose and combination of various elements, in fact, it could affect national law more or less, based on an adaptation of community and is used more or less intensively on quality distribution of European law and the adequacy and quality of deepening internal administrative legislation. This flexibility can be very useful, referring expansion that has occurred and which aims to complicate not only the organization but also the operation of European "common system".
In the case of the law on liability for violations of EU law, is clearly defined the traditional approach of the court. When obligations are not met, the state itself is responsible, and not its individual organs. Clearly, European administrative frame has undergone a widespread, as in Member States and in non-member states of the EU, which shows that interstate cooperation is a mutual interest.

References

Cassese S. (2003). *E drejta administrative evropiane paraqet karaktere origjinale?*, (Revistën tremujore të drejtës publike.
Jans J. H. (2007). *Europeanisation of Public Law – Evropianizimi i së Drejtës Publike, Europe Law*. Groningen.
Pollozhani B. Dobjani E. Stavileci E. Salihu L. (2010). *E Drejta Administrative – Aspekte Krahasuese*. Asdreni.
Puto E. (2010). *Kontratat e Administratës Publik*, Tiranë.
ECJ Decision C-6/90 and C-9/90 "*A. Francovich vs. Italy*".