

**EUROPEAN ADMINISTRATIVE SPACE:  
THE PLACE OF POLISH PUBLIC ADMINISTRATION  
AFTER ACCESSION TO THE EU**

AVRUPA İDARİ ALANI: AVRUPA BİRLİĞİNE KATILIM  
SONRASI POLONYA KAMU YÖNETİMİNİN YERİ

Prof. Dr. Hab. Agnieszka SKORA<sup>1</sup>  
Mgr Lukasz MLYNARKIEWICZ<sup>2</sup>

**ÖZET**

Avrupa Birliği'nin ortaya çıkışı AB'ye üye ülkelerin hukuk kültürlerinin birbirine yaklaşması ve bütünleşmesine yönelik yegâne bir fırsatı tetiklemiştir. Avrupa Birliği'ne kabulden sonra Polonya'nın idari sistemi, ulusüstü standartların hâkim olduğu ve "Avrupa İdare Alanı" olarak tanımlanan AB yönetim ağına eklenmiştir. Bununla birlikte, üye ülkeler arasındaki sürekli yakınlaşma, tamamıyla bir idari yakınsama anlamına da gelmemektedir. Bu çalışma, Polonya ve AB yönetim sistemleri arasındaki ilişkilere ve Polonya kamu yönetiminin Avrupa'nın 'yeni hukuksal düzeni'ndeki yerine hasredilmiştir. Yanı sıra yazarlar, idari bakımdan Avrupalılaşmayı destekleyen ve tüm üye ülkelerce benimsenen idari prensipler ve mekanizmalara değinmiştir.

**Anahtar Kelimeler:** *Kamu Yönetimi, Ortak İdare Hukuku, İdari Kapasite, Avrupa İdari Alanı, Yargı Eylemciliği, İyi Yönetim, Kanuna Uygun Yönetim, Polonya Kamu Yönetimi.*

**ABSTRACT**

The emergence of the European Union triggered a unique opportunity for the integration and convergence of legal cultures among the EU Member States. After Poland's accession to the European Union, the Polish public administration system was incorporated into the EU administration network ruled by supranational standards, commonly defined as the "European Administrative Space". However, the constant approximation between Member States does not necessarily mean an overall administrative convergence. This paper is devoted to relations between Polish and the EU administration systems and the place of Polish public administration in the European 'new legal order'. Moreover, authors briefly present administrative principles shared by all Members States and mechanisms that work in favour of administrative Europeanization.

---

<sup>1</sup> Torun Nicolaus Copernicus Üniversitesi, Hukuk ve Yönetim Fakültesi İdare Hukuku Bölümü, Polonya

<sup>2</sup> Torun Nicolaus Copernicus Üniversitesi, Hukuk ve Yönetim Fakültesi İdare Hukuku Bölümü, Polonya

**Key Words:** *Public Administration, Common Administrative Law, Administrative Capacity, European Administrative Space, Good Administration, Administration Through Law, Polish Public Administration.*

## **LIST OF ABBREVIATIONS:**

EAS – European Administrative Space

ECJ – Court of Justice of the European Union

EU – European Union

OECD – Organisation for Economic Co-operation and Development

SIGMA – Support for Improvement in Governance and Management

## **INTRODUCTION: IN SEARCH OF POLAND'S ADMINISTRATIVE CAPACITY**

In the process of candidate's accession to the European Union, the primary importance is usually given to the modernization of national public administration, in order to attain the administrative and judicial capacity required for EU Membership. In other words, public administration – as a domain of domestic affairs – is examined in terms of an ability to successfully implement and enforce *acquis communautaire* that comprises of inter alia common rights and obligations applied to all Member States and EU citizens.

At the time of fifth enlargement process, the major concern of the European Commission was the administrative and judicial capacities of candidate countries of Central and Eastern Europe, which were preparing for the European accession. Simplifying, the concern of the European Commission was, on the one hand, that membership in the European Union requires every administrative domain and economic sector of a Member State to respect the *acquis communautaire*, but on the other, no *acquis* existed in the field of horizontal governance systems at that time. Post-communist countries, such as Poland, were striving for the establishment of a new democratic model of national public administration, in order to align existing mechanisms with criteria set forth at Copenhagen, Madrid or Luxembourg (OECD, SIGMA, 1999: 6-7). It was not an easy task, if taken into consideration that: “*central administrative control was an entrenched feature of Poland's regional policy framework before, during and after the communist period. (...) Regional administrative units were agents of central power, not servants of their community*” (Ferry, 2003: 1100).

In fact, the Polish public administration system needed to be reorganized in line with values and principles that were identified as traditional features of Western democracies (Koprić et al., 2011: 1516 et seq.). The common ground for these reforms was the rule of law (*état de droit*, *Rechtsstaat*), which – in terms of continuous development and changing level of integration within EU Member States – should be perceived as an essence of ‘the principle of administration through law’. In other words, the public administration – in performance of its activities – ought to discharge its responsibilities in accordance with an expressly and legally bestowed legal competence. Although it is widely accepted that public administration has always been a matter of national sovereignty, EU Member States have to provide European citizens with comparable quality and professionalism in the field of national public administration and administrative capacities (Cardona Peretó et al., 2007: 51-59). Consequently, the Polish public administration was confronted with the necessity to comply with European Union’s legislation. This resulted in integrated cooperation between national public administrations. However, instead of promoting an overall institutional convergence, the continuous approximation of legal systems among EU Member States has led to the creation of supranational administrative standards and rules that respect state-sensitive diversity, pursuant to the EU motto *In varietate Concordia*. In particular, a general consensus has emerged among democratic states on key components of good governance, which formulate a set of principles for public administration shared by EU Member States.

This paper is devoted to changes in the Polish public administration after its accession to the European Union and it considers some of the legal issues raised by the administrative reform which took place in Poland after the 1 of May 2004. It is crucial to show the legal dimensions of the changed relationships which that reform has brought about. From the legal point of view, the implementation mechanisms and requirements of the EU legislation have important consequences for the administrative law and administrative procedure of the EU Member States, especially for the organization of public administration, competences of some of administrative authorities, administrative proceedings, administrative judicial procedure and state liability in tort and personnel management (Singh, 2001: 29).

Although it might be stated that Polish public administration is now quite converged with the model of Europeanized public administration, it remains quite specific in its organizational structure. According to H. Izdebski, “*its specificity seems to arise, to a large extent, from the general attachment to the pre-war [pre-Second World War - L.M., A.S.] traditions and their continuation in the present time, which involves following a traditional interest in institutions of some states*”

(Izdebski, 2006: 111-112). After the accession to the EU, Poland still remains the unitary state, rejecting German ideas of federalism or even regionalism. Nevertheless, the Western (especially German) impact is still strong in relation to the system of local government (Izdebski, 2006: 112)<sup>i</sup>, even though, there are some examples of specific authorities uncommon to the other EU Member States such as the local government appeal boards (*samorządowe kolegia odwoławcze*) – special administrative bodies that exercise competences within the own duties of local government. In general, these boards are responsible for decisions in the individual administrative matters as authorities of the second instance. The concept of this collective administrative authority is a quite modern one, arising out of program of creation of self-government bodies after 1989. There is no place to discuss in detail the work of the local government appeal boards in this study, but they may serve as an example of the modern administrative proceedings structure in the Polish public administration (Korzeniowska, 2002). Another evidence of organizational differences between Member States is provided by the Supreme Chamber of Control, which it is not a standard public audit authority among other EU countries.

However, rather than on specific institutional reforms, the article focuses on (1) the place of the Polish public administration in the network of all public administrations of the EU Member States, as well as on (2) the mechanisms that work in favour of increasing convergence in the field of national public administrations among all EU Member States. Moreover, the authors identify (3) principles and supranational rules that facilitate the emergence of the “European Administrative Space”, which over the last two decades has been developed by joint efforts of the European Union institutions, organizations and the academic community (Koprić et. al., 2011: 1515 et seq.). These rules and principles should serve as a role model for future candidate countries since without incorporating them into national systems, it is not possible to gain an administrative capacity, which is a prerequisite of accession to the European Union. Particularly, during the enlargement process, Poland had to implement set of standards and values into its national public administration, in order to ensure that it is capable of transposing, implementing and enforcing the *acquis* in accordance with the principle of “effective results” (Cardona Peretó, 2005: 1-2). This article will attempt to present some of these standards.

## **1. FROM THE MATTER OF NATIONAL SOVEREIGNTY TO THE MATTER OF COMMON INTEREST**

Despite constant integration and expansion of the European Union’s competences, it is generally agreed that public administration is still a matter of national sovereignty. As the European Court of Justice indicated in the

case of Van Gend en Loos, the European Community constitutes: “a new legal order of international law for the benefit of which the States have limited their sovereign right, *albeit within limited fields* (...)”<sup>ii</sup>. Irrespective of the controversies and disputes connected with this verdict, the public administration may be perceived as one of those fields that are currently left at State’s own discretion. However, it has to be noted that discretion (*pouvoir discrétionnaire, freies Ermessen*) does not mean arbitrariness (OECD, SIGMA, 1999: 10)<sup>iii</sup>. It might be stated that EU Member States agreed upon incorporating common standards and principles in order to ensure the unity within the administrative systems, without insisting upon the institutional uniformity of public administrations (Davitkovski et al., 2011: 128-132). Thus, accessing countries, as well as the present Member States are not free from different impacts that may influence (1) the institutional shape of their public administration or (2) the performance of duties of national authorities. In this study, the authors focus on the latter aspect of the public administration.

### **1.1. THE EUROPEAN ADMINISTRATIVE SPACE: TOWARDS A BETTER EFFICIENCY IN THE PERFORMANCE OF PUBLIC ADMINISTRATION**

In reference to Poland’s system of public administration and its changes during the accession process, it is necessary to highlight an important role played by the SIGMA programme (Support for Improvement in Governance and Management), which is a joint initiative of the European Union and the Organisation for Economic Co-operation and Development (OECD). The SIGMA programme has been established in 1992 in order to provide methodologies and tools to support administrative reforms in the EU candidate countries, as well as to facilitate implementation of good practices in the field of public administration (OECD, SIGMA, 1998: 2-15). The SIGMA strives for a better efficiency in the performance of public administration, while working with the ministries at the centre of government, state agencies or parliaments.

Currently, the SIGMA provides assistance to many countries that are either EU candidate<sup>iv</sup> or potential candidate countries<sup>v</sup>, as well as to EU Neighborhood states<sup>vi</sup>. In general, the SIGMA has considerably contributed to the improvement of national public administrations in Central and Eastern Europe by providing recommendations on improving laws and administrative arrangements, advising on the design and implementation of reforms, as well as by issuing numerous policy papers and comparative studies<sup>vii</sup>. It has to be noted that during the fifth enlargement process, one of the assisted countries was Poland and SIGMA’s task was to assess the alignment of Polish public administration to the EU standards, especially in

terms of administrative and judicial capacities. Once again, it should be underlined that before Poland's pre-accession process no *acquis* existed in reference to the instruments on how candidate countries should ensure their own administrative capacity.

Therefore, within an effort of a whole EU community, while recognizing a special role of SIGMA's assistance, it was possible to develop common administrative standards with regard to the horizontal governance systems, such as civil service, financial control, management of public expenditure, public procurement and policy-making capacities. As a result, these standards have laid down foundations for the "*European Administrative Space*" concept.

Initially, the European Administrative Space was intended to serve as a role model for candidate countries, especially during transformations and the emergence of new democracies in Central and Eastern Europe such as Poland (Heidbreder, 2009: 6 et. seq.). Rationale behind European Administrative Space was to set common minimum benchmarks in reference to standards of horizontal systems of governance and by doing so to ensure that national public administrations are capable of transposing, implementing and enforcing the *acquis* in accordance with the principle of "effective results" (Cardona Peretó, 2005: 1-2). Moreover, the SIGMA has recognized that administrative principles can be systematized into more general values, which at that time of Poland's accession to the European Union were common to Western European countries. SIGMA has distinguished four groups of administrative law principles that may serve as fundamentals for any others, which are: (1) reliability and predictability (*legal certainty*), (2) openness and transparency, (3) accountability, (4) efficiency and effectiveness. According to SIGMA all other principles may be derived from the abovementioned and these should be incorporated by any means into national systems in order to ensure administrative capacity (OECD, SIGMA, 1999: 6).

The issue of administrative capacity and reliability is given a high priority in the enlargement process since the assessment of these elements indicates candidate countries' factual degree of preparedness to become Member States. The administrative capacity – as a criterion for EU membership – was added to the Copenhagen criteria in December 1995 by the Madrid European Council. However, the notion of administrative capacity has not been specified until July 1997, when the Commission issued its Opinions on the applications of ten candidate countries.

The Commission did not give a clear definition of the phrase 'administrative capacity', however, it referred to this term in the sectoral evaluation of the section "*Administrative Capacity to Apply Acquis*" and thus it

is possible to deduce what the Commission define by using this term (Verheijen, 2000: 5-11). For instance, the Commission accented several reforms in the public administrations of the candidate countries, which ought to be performed and – in particular – it has focused on the civil service reform recognizing that: the civil service must be established through tailored legislation; specific career civil service must be in place; the civil service must be politically neutral and there should be a clear separation between a public sphere and a private sector (Moxon-Browne, undated: 5-6). As for civil servants, it is also stressed in the literature that there is a need of sufficient job protection, stability and clearly defined rights and duties (OECD, SIGMA, 1999: 21-22). In the document “*Agenda 2000 - Commission Opinion on Poland’s Application for Membership of the European Union*” we may find a brief description of Polish administrative capacity divided into sectoral chapters<sup>viii</sup>. The Commission stressed “*the absence of a coherent and effective national policy for the recruitment, remuneration, training and development of the Civil Service remains a significant constraint on Poland’s preparations for membership*”. On 1st July 1999, the revised law on the Civil Service came into force in order to address Commission’s concerns.

As a consequence of these Opinions, from the end of 1998 the European Commission decided to issue regular reports to the Council, reviewing the progress of each Central and Eastern European candidate country towards accession, in particular with regard to the rate at which the applicant State is adopting the *acquis* (European Commission, 1998: 5-6). At this point, it is worth noting that the SIGMA’s assessment uses a seven-step rating scale, from the top ‘standard achieved’ to ‘standard unlikely to be achieved under present arrangements’ (Verheijen, 2000: 19-22). However, the baseline assessment in reference to the administrative capacity covers six core areas, which are: (1) Policy-making and co-ordination machinery; (2) Civil Service; (3) Financial management; (4) Public Procurement; (5) Internal Financial Control; (6) External Audit (Verheijen, 2000: 19). The SIGMA has also produced so-called checklists for public administration (OECD, SIGMA, 1997: 1-30), such as the “*Checklist for a General Law on Administrative Procedures*”, where we may find questions related to best practices in the field of administrative proceedings (OECD, SIGMA, 2005: 1-16). Each country should answer these questions to ensure that it has incorporated common benchmarks that are crucial from the perspective of administrative capacity.

As for the progress reports, they include several different sections, which basically cover issues that are crucial for the relations between candidate country and the European Union. The report is a form of regular evaluation, which describes themes such as the situation of applicant State from the perspective of the political or economic conditions stipulated by the European Council. Moreover, the report examines candidate country’s

capacity to adopt the obligations of membership, which derive from the *acquis*, the secondary legislation, as well as the European Union's policies. Finally, and what is the most important for the purpose of this article, the European Commission's progress reports contain a separate section for the assessment of applicant State's judicial and administrative capacity to implement *acquis* after the membership.

In other words, it is expected that the applicant State would undertake any measures required to adapt its administrative structures, so as to guarantee and facilitate the harmonious implementation of the EU policies after the admission. Furthermore, the section devoted to administrative capacity is always divided into sectoral chapters that reflect key areas for the implementation of the *acquis*, such as: single market, competition, telecommunications, energy, taxation, agriculture, fisheries, transport, social affairs, employment, regional policy and cohesion, environment, consumer protections, justice and home affairs, border management, customs, financial control etc. However, it has to be noted that the number of this sectoral chapters has increased over the time (currently 35), as a result of expanding harmonization within the EU.

In the course of time, the meaning of the European Administrative Space has changed and now it is more associated with a supranational forum of European administration than just an adaptive or evaluative platform for candidate countries (Koprić et al., 2011: 1520). In these categories, the European Administrative Space embodies an undergoing process of expanding convergence between national administrative legal regimes and governance practices of EU States. However, this convergence is mostly visible in reference to shared EU standards, but not necessarily in the structural dimension. Moreover, the European Administrative Space concept may also be defined as “*the area in which increasingly integrated administrations jointly exercise powers delegated to the EU in a system of shared sovereignty*” (Hofmann, 2008: 671). The other definition provided by the SIGMA itself implies that: “*the EAS 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*” (OECD, SIGMA, 1999: 5). These standards formulate rather a “soft law” than “hard law”, unless they are directly expressed in particular provisions and this is why EAS principles should be perceived as non-formalized *acquis communautaire* (OECD, SIGMA, 1999: 19). It has been generally agreed that the European Union consists of Member States with different systems of governance and different legal traditions, what justifies setting standards or principles leaving some space for specific regulations at country's own discretion.



## **1.2. PUBLIC ADMINISTRATION: AS THE MATTER OF COMMON INTEREST**

Since Poland's accession to the European Union, it is no longer possible to perceive Polish public administration only as a matter of national sovereignty. One may argue whether the public administration is a fully independent legal system, however, there is no doubt that Poland's membership in the EU resulted in essential transformations in the national public administration. In particular, after the 1st May 2004, Polish public administration system entered the EU club of Europeanized public administrations.

As it has been previously noted, the necessity to comply with EU legislation entails an integrated cooperation between national public administrations. Hence, the European Administrative Space concept should also be perceived in the context of the 'principle of progression', which implies that each Member State should continuously improve its administrative and judicial capacities in order to achieve better efficiency in the performance of national public administration<sup>ix</sup>. Moreover, the Article 197 of the Treaty on the Functioning of the European Union stipulates that the effective implementation of Union law by the Member States shall be regarded as a matter of common interest<sup>x</sup>. Moreover, paragraph 2 sets forth that "*the Union may support the efforts of Member States to improve their administrative capacity to implement Union law*". What should be understood by the term of 'a matter of common interest'? In a great simplification, it might be stated that the quality of national public administrations in the European Union is as strong as strong is its weakest link, so whenever any State fails to fulfill its obligations within the EU – all other countries may be affected (*the contamination effect*).

In the literature, the concept of EAS is also seen as "*arising from the pragmatic needs of trans-boundary regulation underpinned by a normative aspiration to a European rule of law*" (Leskoviku, 2011: 69-73). However, it should be realized that there are more and more needs, which influence national public administrations in direct or indirect way. These needs are affected by several driving forces such as the pre-accession twinning agreements, continuous contacts between officials of Member States, as well as economic pressures or the ECJ's case-specific harmonizing interventions. Subsequently, such mechanism brought a set of commonly accepted principles that are in general defined in Founding Treaties and developed by the practice of the Court of Justice of the EU. In fact, the jurisprudence of the Court has played the major role in shaping general administrative law principles within the EU that may be viewed as an interpretative framework to be followed by national courts (OECD, SIGMA, 1999: 18). However, it has been more

than twenty years that ECJ was firstly accused of an excessive judicial activism, which interferes with the national jurisdictions of Member States.

Nowadays, it might be stated that this critical assessment has changed and the ECJ's activity is more appreciated. The "judicial activism" – which is somehow perceived as pejorative term in this context – has been replaced with the term of "creative elaboration of law" and the ECJ has been assigned with the role of a "guardian of Treaties" (Aydin, undated: 3-14). From the perspective of administrative law, there are many principles that have been developed by the ECJ and which are currently embodied in so-called 'right to good administration'.

### **3. RIGHT TO GOOD ADMINISTRATION**

Generally, right to good administration gained a legal significance after the adoption of the Lisbon Treaty, which entailed entrance of the Charter of Fundamental Right of the European Union<sup>xi</sup>. The Article 41 paragraph 1 of the Charter – entitled "right to good administration" – stipulates that "*Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the Institutions, bodies and agencies of the Union*". Thus, it might be stated that the right to good administration is defined by several principles or rights, which are widely spread over the whole *acquis* and common to the laws of all Member States of the European Union. For instance, on the basis of the Article 41, we may identify principles or rights which determine the notion of 'a good administration'. However, it has to be noted that these principles have been developed in the case-specific interventions by the Court of Justice and in the rulings of the Court of the First Instance<sup>xii</sup>. These are *inter alia*: (1) the principle of impartiality (objectivity)<sup>xiii</sup>, (2) the principle of fairness, (3) the principle of timeliness<sup>xiv</sup>, (4) the right to a hearing in administrative decision-making procedures before an adverse decision is taken by a public authority, (5) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy<sup>xv</sup>, (6) the obligation of the administration to justify its administrative acts or decisions (*statement of reasons*)<sup>xvi</sup>, (7) the right to an effective remedy and compensation in case of damage caused by Union's institutions or by its servants in the performance of their duties<sup>xvii</sup>, (8) the right of every person 'to write to the Institutions of the Union in one of the languages of the Constitution and must have an answer in the same language' (Article 41 para. 1-4 and Article 47 of the Charter)<sup>xviii</sup>.

Furthermore, by virtue of the Article 41 of the Chapter, the right to good administration is granted to 'every person'. In other words, the scope of protection is broadened to all people, including non-citizens of the European Union, what has not been done in reference to many other rights,

such as: (1) the right to petition to European Parliament, (2) the right to refer to European Ombudsman cases of maladministration in the activities of the institutions, bodies or agencies of the Union (3) the right of access to documents of the institutions, bodies, offices and agencies of the Union (Articles 42-44 of the Charter). Does it mean that these rights should be excluded from the notion of 'good administration' because of their narrow scope of applicability? Certainly not.

The term of 'good administration' should be perceived as a metaphor or blank concept, which vertically may exist on two different levels. First level refers to the rights or principles which are applicable to all people, including non-citizens of the EU. Secondly, we may identify the group of rights or principles which – because of their peculiar nature – must be addressed only to the category of EU citizens. Therefore, it is not the scope of applicability that determines the notion of 'a good administration' but the fact that the person comes into contact with the Union's institutions and bodies (Tanquerel, 2007: 6). Horizontally, the very concept of the right to good administration is twofold, as it should apply not only to situations at the EU level (EU institutions, agencies and bodies) but also to relations at the national level, covering the services provided by national authorities and national public administration.

As for the administrative liability issues in the Central European countries, like Poland (German origin), it is much narrower than – for instance – in France or England. Matters of contracts concluded by public administration and matter of non-contractual liability of public administration (also called "tort") belong to private law (Izdebski, 2006: 93). The liability of the public administration to compensate an individual for any loss or injury caused to him may arise in different ways (Council of Europe, 1996: 46)<sup>xix</sup>. It may arise for a breach of public contract, commission of a tort, expropriation or quasi-expropriation of property, sacrifice of an individual in the public interest or under any special condition given in legislation. A special feature of the tort liability of the public authorities in Polish law has its basis in the private law. For the aim of the tort liability of the Polish public authorities, the state stands in the position of any other corporation – just as a corporation is liable for the torts of its organs (Singh, 2001: 244).

As for the 'right to good administration', it has to be noted that the Article 41 of the Charter is commonly linked with the European Code of Good Administrative Behaviour, which was adopted by the European Parliament on 6 September 2001. The Code is an important tool for the European Ombudsman in performing his activities, while examining whether "*a public body fails to act in accordance with a rule or principle which is binding upon it*". Such situation is defined as 'maladministration' and this term has been approved by the European Parliament (European Ombudsman, 1997: 22-23). The

Code may also serve as a guideline for civil servants, helping them “*to better their performance by directing attention to areas for improvement*”<sup>xx</sup>.

The provisions of the Code are to a large extent repeated in the Charter (i.e. rules of proportionality, absence of abuse of power, lawfulness, impartiality and independence, fairness, reasonable time-limit for taking decision etc.). However, on the one hand the Code is a non-binding legal instrument, but on the other it is more elaborative than the Charter’s provision. As it has been stated: “*the Code was originally intended to explain in more detail what the Charter’s right to good administration should mean in practice*” (Statskontoret, 2005: 14; Mendes, 2009: 1; Kanska, 2010: 296-326). Nevertheless, the Code should be recognized as a crucial resource or a template for Member States and the candidate countries inasmuch as its primary goal is to facilitate and promote better efficiency in the performance of public administration.

## **CONCLUSION**

After Poland’s accession to the European Union, the public administration system was reorganized in accordance with rules and principles that are common to the Member States of the EU. The features that characterize ‘State of law’ were strengthened or even newly introduced into the Polish legal system. The Europeanized public administration must ensure carrying out of the tasks of the EU law by providing full effectiveness of the Community rules<sup>xxi</sup>. As D’Orta points out: “*The European Union has now practically completed the fundamental and propaedeutic season of the mere elimination of the barriers between the Member States and is entering a new season in which priority will be accorded to the drawing up and implementation of common positive policies*” (D’Orta, 2003: 8). It might be stated that these policies will create a future shape of the European Administrative Space and will – either directly or indirectly – influence national public administrations. However, there are two different aspects that should be considered, while discussing an issue of the Europeanized public administration. In particular, it should be noted that the constant approximation of legal systems between Member States does not necessarily mean an overall convergence.

Firstly, in terms of the homogenization of the administrative capacities of the EU Member States, it is not the administrative systems, institutions or procedures that should be harmonized (D’Orta, 2003: 9). As far as the authors are concerned, it is neither possible nor desirable to encroach upon the uniformity of national public administrations. Currently, we may observe rather an institutional divergence (*an institutional robustness hypothesis* – Olsen, 2002) than convergence among the EU Member States (Kassim, 2003: 128 et seq.; Page, 2003: 162 et seq.). Therefore, the principle of the autonomy

should be given an utmost importance while framing future common policies.

The second dimension of the convergence refers to the implementation of common supranational administrative standards or principles that are necessary to provide the efficiency and the quality of public services (Mangenot et. al, 2005: 13-39). Hence, without integration in the performance of the national public administrations, it will not be possible to ensure the same professionalism within all EU Member States. In general, there are many tools – presented throughout the paper – that work in favour of such harmonization, which should be perceived as a desirable state. In favour of administrative convergence works a general need of proper application and implementation of European Union law (Kadelbach, 2002: 167 et seq.).

As for the EU administration, current shape – from the horizontal and vertical perspective – brings a conclusion that it is generally based on three important concepts, which are: functional unity, organizational separation and procedural cooperation. (Hofmann et. al., 2011: 4 et seq.).

As for the future of the European Administrative Space, G. Heidbreder argues that “*theoretically we should rather expect a process of increasing differentiated coherence than either increasing convergence or divergence between member states*” (Heidbreder, 2009: 26). However, this future should be also seen through the prism of the future enlargements, which may lead to more strict European standardization or reassessment of the European Union’s policies and objectives in reference to national public administrations.

## REFERENCES

- AYDIN, Yavuz (undated), *The European Court of Justice has clearly returned (...)*, [http://www.justice.gov.tr/e-journal/pdf/european\\_court.pdf](http://www.justice.gov.tr/e-journal/pdf/european_court.pdf) [accessed on: 20.06.2013].
- AZIZ, Miriam (2004), *Mainstreaming the Duty of Clarity and Transparency as part of Good Administrative Practice in The EU*, *European Law Journal*, Vol. 10, No 3, pp. 282-295.
- CARDONA PERETÓ, Francisco (2005), *The European Administrative Space, Assessing Approximation of Administrative Principles and Practices among EU Member States*, SIGMA.
- CARDONA PERETÓ, Francisco and FREIBERT, Anke (2007), *The European Administrative Space and Sigma Assessments of EU Candidate Countries*, *Hrvatska Javna Uprava*, god. 7, br. 1, pp. 51-59.

- COUNCIL OF EUROPE (1996), *The Administration and You: A Handbook*, Strasbourg: Council of Europe Publishing.
- COUNCIL OF EUROPE (1997), *Administrative discretion and problems of accountability proceedings*, 25th Colloquy on European Law, Oxford (United Kingdom), 27-29 September 1995, Strasbourg.
- DAVITKOVSKI, Borče and PAVLOVSKA-DANEVA, Ana (2010), *The European Administrative Space as a Challenge for Public Administration Reform in the Republic of Macedonia*, Hrvatska i Koparativna Javna Uprava, god. 11, br. 1, pp. 127-146.
- D'ORTA, CARLO (2003), *What Future for the European Administrative Space?*, Working Paper No. 2003/W/5, European Institute of Public Administration.
- EUROPEAN COMMISSION (1998), *Regular Report from the Commission on Poland's Progress Towards Accession*.
- EUROPEAN OMBUDSMAN (1998), *Annual Report for 1997*, Strasbourg.
- FERRY, Martin (2003), *The EU and Recent Regional Reform in Poland*, Europe-Asia Studies, Vol. 55, No. 7, pp. 1096-1116.
- HARLOW, Carol (1998), *European Administrative Law and the Global Challenge*, EUI Working Paper, RSC No 98/23.
- HEIDBREDEr, Eva (2009), *Structuring the European Administrative Space: Channels of EU Penetrations and Mechanisms of National Chance*, KFG Working Paper Series, No. 5, Kolleg-Forschergruppe (KFG) „The Transformative Power of Europe“, Free University Berlin.
- HOFMANN, Herwig (2008), *Mapping the European administrative space*, West European Politics, Vol. 31, No. 4, pp. 662-676.
- HOFMANN, Herwig, ROWE, Gerard and TÜRK, Alexander (2011), *Administrative Law and Policy of the European Union*, Oxford University Press, Oxford.
- KADELBACH, Stefan (2002), *European Administrative Law and the Law of a Europeanized Administration*, in Joerges, C., Dehousse, R. (eds.) (2002), *Good Governance in Europe's Integrated Market*, Oxford University Press, Oxford, pp. 167 et seq.
- KANSKA, Klara (2010), *Towards Administrative Human Rights in the EU. Impact of the Charter of Fundamental Rights*, European Law Journal, Vol. 10, No. 3, pp. 296-326.

- KASSIM, Hussein (2003), *The European Administration between Europeanization and Domestication*, in Hayward, J., Menon, A., (eds), (2003), *Governing Europe*, Oxford University Press, pp. 128 et seq.
- KOPRIĆ, Ivan, MUSA, Anamarija and LALIĆ NOVAK, Goranka (2011), *Good administration as a ticket to European Administrative Space*, Zbornik Pravnog fakulteta u Zagrebu, 61:5, pp. 1516-1560.
- KORZENIOWSKA, Agnieszka (2002), *Postępowanie przed Samorządowym Kolegium Odwoławczym*, Krakow.
- LESKOVIKU, Migena (2011), *European Administrative Space as a New European Challenge for Public Administration Reform*, ASsee Online Series, No. 4, National and European Values of Public Administration in the Balkans, pp. 69-73.
- MANGENOT, Michel et. al (2005), *Public Administrations and Services of General Interest: What Kind of Europeanisation?*, European Institute of Public Administration, Maastricht, pp. 13-39.
- MENDES, Joana (2009), *Good Administration in EU Law and the European Code of Good Administrative Behaviour*, European University Institute Working Papers, Law, no. 9.
- MOXON-BROWNE, Edward (undated), *Administrative Capacity in the European Union: How High Can We Jump?*, Centre for European Studies, University of Limerick, <http://www.coleurope.eu/content/rd/devoffice/acad/cooperation/EITC/Paper%20Moxon-Browne.pdf> [accessed on: 20.06.2013].
- NICOLAIDES, Phedon (2012), *Administrative Capacity for Effective Implementation of EU Law*, European Institute of Public Administration, Eipascope, Bulletin No. 2012/01, pp. 5-11.
- NICOLAIDES, Phedon and GEILMANN, Maria (2012), *What is Effective Implementation of EU Law?*, Maastricht Journal of European and Comparative Law, Vol. 19, No. 3/2012, pp. 383-399.
- OECD (1997), *Checklist on Law Drafting and Regulatory Management in Central and Eastern Europe*, Sigma Papers, No. 27, OECD Publishing.
- OECD (1998), *Preparing Public Administrations for the European Administrative Space*, Sigma Papers, No. 23, OECD Publishing.
- OECD (1999), *European Principles for Public Administration*, Sigma Papers, No. 27, OECD Publishing.
- OECD (2005), *Checklist for a General Law on Administrative Procedures*, Sigma Papers, OECD Publishing.

- OLSEN, Johan (2003), *Towards a European Administrative Space?*, ARENA Working Papers WP 02/26.
- PAGE, Edward (2003), *Europeanization and the Persistence of Administrative Systems*, in Hayward, J., Menon, A., (eds), (2003), *Governing Europe*, Oxford University Press, pp. 162 et seq.
- PAPADOULIS, Konstantinos (2005), *EU integration, europeanization and administrative convergence: The Greek case*, Journal of Common Market Studies, Vol. 43, No. 2, pp. 349-370.
- SINGH, Mahendra (2001), *German Administrative Law in Common Law Perspective*, 2nd ed., Springer Verlag, Berlin.
- STATSKONTORET (2005), *Principles of Good Administration in the Member States of the European Union*, Stockholm.
- TANQUEREL, Thierry (2007), *Good administration at the service of good governance: safeguarding individual rights and implementing democratic decisions*, In Pursuit of Good Administration, European Conference, DA/ba/Conf (2007) 6e, 29-30 Nov. 2007, Warsaw.
- VERHEIJEN, Tony (2000), *Administrative capacity development - a race against time?*, WRR Scientific Council for Government Policy, Working Document W107, Hague.

---

**NOTES:**

<sup>i</sup> The Federal Republic of Germany is a federal state. Its nature as federal state is one of principles laid down in the Constitution (art. 20 in connection with art. 79). The administrative competence is divided between the general government (the Federation) and the regional governments (Singh, 2003: 33).

<sup>ii</sup> Case 26/62, NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Netherlands Inland Revenue Administration, [1963] ECR 1.

<sup>iii</sup> See also: Council of Europe (1997), *Administrative discretion and problems of accountability proceedings*. 25th Colloquy on European Law, Oxford (United Kingdom), 1995, Strasbourg.

<sup>iv</sup> The former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey – as EU Candidates; Croatia – as EU Acceding Country.

<sup>v</sup> Albania, Bosnia and Herzegovina, Kosovo – as EU Potential Candidates.



<sup>vi</sup> Algeria, Armenia, Azerbaijan, Egypt, Georgia, Jordan, Lebanon, Moldova, Morocco, Tunisia and Ukraine – as EU Neighborhood countries.

<sup>vii</sup> See: <http://www.oecd.org/site/sigma/> [accessed on: 20.06.2013].

<sup>viii</sup> See: [http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/poland/po-op\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/dwn/opinions/poland/po-op_en.pdf) [accessed on: 20.06.2013]

<sup>ix</sup> For more comprehensive study of administrative capacity in the context of ‘effective implementation’ see: Nicolaides, 2012: 5-11; Nicolaides et. al, 2012: 383-399.

<sup>x</sup> See: Consolidated Version of the Treaty on the Functioning of the European Union, Official Journal of the European Union, 2010/C 83/47.

<sup>xi</sup> See: Charter of Fundamental Rights of the European Union, Official Journal of the European Union, 2010/C 83/02.

<sup>xii</sup> For the list of other cases which had included the principle of good administration see: *Explanations Relating to the Charter of Fundamental Rights of the European Union*, document Convent 49 of 11.10.2000, pp. 36-38. [http://www.europarl.europa.eu/charter/pdf/04473\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/04473_en.pdf) [accessed on: 20.06.2013].

<sup>xiii</sup> See: Case C-269/90, Technische Universität München v Hauptzollamt München-Mitte, 1991; Case T-44/90, La Cinq SA v Commission of the European Communities, 1992.

<sup>xiv</sup> See: Case C-282/95 P, Guérin v Commission of the European Communities, 1997; Cases T-5/00 and 6/00, Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied and Technische Unie BV v Commission, 2003.

<sup>xv</sup> See: Case C-353/01 P v Olli Mattila v Council of the European Union and Commission of the European Communities, 2004; Case T-2/03, Verein für Konsumentinformation v Commission of the European Communities, 2005.

<sup>xvi</sup> See: Cases 18 and 35/65, Max Gutmann v Commission of EAEC, 1967; Case 87/78, Welding & Co v Hauptzollamt Hmbourg-Waltershof, 1978; Case 250/84, Eridania Zuccherifici nazionali SpA and Others v Cassa conguaglio zucchero and the Italian Ministry of Finance and Treasury, 1986; Case 222/86, Union nationale des entraineurs et cadres techniques professionnels du football (Unectef) v George Heylens and Others, [1987] ECR 4097.

<sup>xvii</sup> See: Case 5/71, Aktien-Zuckerfabrik Schöppenstedt v Council of the European Communities, 1971; Case 101/78, Granaria BV v

Hoofdproduktschap voor Akkerbouwprodukten, 1979; Case 49/79, Richard Pool v Council of the European Communities, 1980; Cases 194 to 206/83, Asteris AE and Others v Commission of the European Communities, 1985; Case 81/86, De Boer Buizen v Council and Commission of the European Communities, 1987; Cases C-104/89 and C-37/90, J.M. Mulder and Others and Otto Heinemann v Council of the European Communities and Commission of the European Communities, 1992; Case C-352/98 P, Laboratoires Pharmaceutiques Bergaderm SA and Jean-Jacques Goupil v Commission of the European Communities, 2000.

<sup>xviii</sup> “*Transparency and accessibility of »official« language is of paramount importance for sustaining democratic legitimacy, respect for the rule of law and good governance in the EU. It is argued that there is a duty of clear and transparent language use both internally and externally in EU official communications, which should be mainstreamed into European Union law based on the principle of »good administration« contained in Article 41 of the EU Charter of Fundamental Rights*”. (Aziz, 2004: 286 et seq.)

<sup>xix</sup> “Injury” can be physical damage or financial loss, whereas reparation for moral suffering also is granted.

<sup>xx</sup> See: <http://www.ombudsman.europa.eu/en/resources/code.faces#hl6> [accessed on: 20.06.2013].

<sup>xxi</sup> See: Art. 3-6 of the Treaty on the Functioning of the European Union, Official Journal of the European Union, 2010/C 83/47.