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Convergence and Symbiosis of Public Administration Principles - International and European Perspective¹

***Abstract:** Under strong influence of the European coherency, the member states are constantly improving public administration performance. The scientific justification of the paper has been reflected through analysis and synthesis of legally binding or non-binding /international and European principles. It focuses on international and European rules and practice promoting principles of legality, professionalism, transparency, responsibility, public service integrity. They have a strong influence on the development and implementation of the standards in national public administration systems. It is expected that harmonization of national regulations will encourage development of common practice of public officials' performance. The European Court of Human Rights doctrine and practice has developed the principle of legality (rule of law, legal certainty). The paper also emphasizes the efforts of European institutions (European Commission,*

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Council of Europe, European Court of Human Rights) as well as other international organisations (United Nations).

The paper offers the analysis and comparison of divergent tendencies in the permanent public administration reform. It elaborates convergence and symbiosis of international and European standards and their influence to national administrative systems. Particular attention has been given to comparison at cross-national level and possibilities for putting standards in practice in various national legal systems.

Prevailing research methods are theoretical and normative, comparative and descriptive research methods, as well as cross-national and international comparisons with respect to case law of European institutions (European Court of Human Rights, Council of Europe).

Keywords: *public administration principles, convergence, European Union, international organizations.*

Introduction

The initiatives by international and regional organisations promote constant changes in the public administration systems of Member States. By adopting common standards, the States modify and improve administrative systems and harmonise the most significant segments of public administration (Vukašinić Radojičić, 2018). In comparative systems, public officials play a crucial role in all phases of the policy development process – they contribute to the formulation of policy programmes, help in defining fundamental policy decisions by participating in legislative and other drafting, ensuring thus the necessary professional knowledge required for the implementation of public policies and programmes, and stand as a link between politicians and citizens (Meny, Knapp, 1998:265).

International organizations and European Union institutions have always been strongly engaged in the international fight against corruption, promoting lawfulness, the stability of democratic institutions, human rights protection and social and economic progress (Vukašinić, Čvorović, 2019). Besides the influence and contribution of the European Union and its institutions to the development and application of administrative standards, what should not be overlooked

are the initiatives of other international and regional organisations – the United Nations Organisation, Council of Europe and other associations. The aim of the paper is to point out to the most significant public administration acts and principles, brought about as result of strong convergence between the national legislation and practice, at the European and international level.

International principles for Public Administration – The United Nations perspective

The efforts of the United Nations Organisation are aimed at supporting the States in establishing a clear and consistent legal framework and enforcing the rule of law, developing well-organised and adequately funded and staffed judicial, administrative, security and other institutions, as well as developing a civil society conducive to the strengthening of the rule of law and the accountability of public officials and institutions (UN, Charter of the United Nations, art. 55). The acts of the United Nations promote: the principle of legality (the rule of law), legal certainty, legitimate expectations, professionalism, transparency, efficiency, effectiveness, equality, accountability, ethical conduct, and the set-up and application of integrated and connected elements of the human resources management system.

One of crucial sustainable development goals refers to building effective, accountable, transparent institutions at all levels (UN, Resolution, 2017). Further, in accordance with the United Nations Resolution, promoting the rule of law at the national and international level, ensuring equal access to justice for all, has been viewed as a key standard. This goal assumes ensuring responsive, inclusive, participatory and representative decision-making at all levels. The right to information held by public authorities is an integral aspect of freedom of expression and serves as a mechanism to support government openness and accountability. Survey results indicate that supervision and appeals bodies should be an essential component of access to information law enforcement (UN, The Sustainable Development Goals Report, 2020).

An essential international act considering the strengthening of measures and the development of international cooperation for the efficient prevention and suppression of corruption is the United Nations Convention against Corruption (UN, United Nations Convention

against Corruption, 2004). The Convention promotes integrity, accountability, and legality in performing affairs of public importance and managing public property (art. 1), while seeing corruption as a negative phenomenon undermining professionalism, the rule of law, and human rights. Because of the importance of combating corruption and conflict of interest in the public administration of Signatory States, the Convention applies to all ‘holders of public authority’ (*public officials*) – persons exercising legislative, executive, administrative or judicial functions. In the part relating to the functioning of the public administration, it promotes the merit principle in recruitment (appointment) and career promotion and the importance of transparency and fairness of the selection process. The Convention stresses the importance of establishing mechanisms for effective control of public finances (external and internal audit) and distribution of public information (availability of information of public importance, periodic reporting, simplification of administrative procedures, publication of information). With a view to ensuring legality, transparency, and responsibility in the work of an official, it proposes the adoption and application of a code of conduct for public sector employees, the violation of which subjects the officials to disciplinary and other legal procedures. Public administration reform has also been the subject of other UN acts resting on The UN declaration (UN, Human Resources for Effective Public Administration in a Globalised World, 2005). It points out the key role of an efficient and professional administration in the context of providing quality services to citizens and businesses.

European Principles for Public Administration – The Council of Europe initiatives

In addition to the mentioned international acts, particular importance is also attached to the standards for improving the performance of public administration enshrined in the acts of the Council of Europe. The Convention for the Protection of Human Rights and Fundamental Freedoms is among the most significant regional treaties (Council of Europe, 1950). The standards of good administrative conduct and the status of public officials are more specifically regulated by Recommendation No. 6 of the Committee of Ministers of the Council of Europe Member States (Council of Europe, 2000). Another act

of notable importance is the Recommendation on the Exercise of Discretionary Powers by Administrative Authorities, which promotes the principles of ‘good governance’ (Recommendation No. R(80)2), of the Committee of ministers concerning the Exercise of Discretionary Powers by Administrative Authorities).

The Council of Europe has always had a strong interest and engagement in the international fight against corruption. Along with the UN Convention against Corruption, the Council of Europe’s Criminal Law Convention is one of the crucial international documents in the field of combating corruption (Council of Europe, 1999). It starts by recognising that fight against corruption requires cross-border cooperation among the States and the cooperation of States with the international institutions.

The standards of conduct essential to the prevention of corruption, education of officials, and the change of ethical climate within administrative bodies and organisations are more specifically regulated by the Council of Europe’s Code of conduct for public officials (Council of Europe, 2000). The Code promotes contemporary working principles of public administration – the principle of legality, transparency, efficiency, the confidentiality of information, personal responsibility and professional independence, fair conduct and integrity, and professional and vocational development and training. The provisions of the Code regulate in more detail the issues relating to the conflict of interest, participation in political activities, privacy protection, gift acceptance, misuse of the official position, utilisation of public resources, managerial responsibility, termination of employment, and monitoring of the compliance with the rules of the Code.

The European Court of Human Rights doctrine - the principle of legality (rule of law)

The European Court of Human Rights adopts a comprehensive approach to defining the principle of legality and the rule of law. In the broadest sense, the main elements of the rule of law include: the principle of legality, the principle of legal certainty, and the principle of procedural fairness (Omejec, 2014). By considering the notion of the rule of law as a “practical concept” in the first place, Venice Commission (Venice Commission, 2011) has identified the “necessary

elements of the rule of law, as well as those of the *Rechtsstaatsbegriff*” for which “it seems that the consensus could be found”. These are: 1) accessibility of the law, which means that it must be intelligible, clear, and predictable; 2) questions of legal right must be normally decided by law rather than discretion; 3) equality before the law; authority must be exercised lawfully, fairly, and reasonably; 4) human rights must be protected; means for dispute resolution must be provided without excessive costs or delays; 5) trials must be fair; a state must comply with its obligations under international and national laws. Furthermore, the European Court underlines two essential aspects of the rule of law: 1) quality of laws and 2) control of discretionary powers of the executive (branch) in applying the laws in order to prevent arbitrariness.

The European Court views the predictability of laws in light of the requirements that the rule of law imposes on national legislations. Additionally, predictability also extends to examining the predictability of judicial decisions. Notably, the convention law distinguishes between “predictability of laws” and “predictability of judicial decisions”.

Legal certainty, together with legal supremacy, implies that the law is implemented in practice. Therefore, it is crucial to assess whether the law is applicable in practice before adopting it, as well as to further evaluate whether it can be applied effectively. This means that *ex ante* and *ex post* evaluation of legislation is essential to achieving the principle of the rule of law. The need for legal certainty does not mean that decision-makers must not be granted discretionary power, provided that legal remedies and procedures are in place for the prevention of its abuse. In a state founded on the rule of law, there must be no *unfettered power*.

The retroactive effect of legal norms is another aspect contrary to the principle of legal certainty. Legal certainty also assumes respect for the principle of *res judicata*, or of the decided matter. The principle of legal certainty, finally, also requires that the final decision be enforced. In private law disputes, enforcement of final judicial decisions may require assistance by the state to avoid the *risk of “private justice”*. Legitimate expectation must be of a much more specific nature than a mere hope and have a basis in a legal provision or a legal act such as a judicial decision. The European Court has in a

series of its decisions stressed that the applicants do not have a “legitimate expectation” if it cannot be established whether they have a “*currently enforceable claim*” that was sufficiently established.

All the above elements of the principle of legal security or legal certainty were emphasized by the European Court in its case-law. It sheds light on them from various perspectives, subject to the matter being discussed in a particular case.

European Union Principles for Public Administration

Although the administrative systems of Member States rest on the traditions of the States, the interaction between the Union law and national administrative laws of Member States brings about changes in the national administrative systems and fosters the process of harmonisation (Schwarze, 1996). European administrative principles and standards make up the unofficial *Acquis*, which is getting closer to becoming official, and together with other administrative standards, values, procedures, and institutions constitute the *European Administrative Space* – a basis for the conduct of the participants in the public life of the Member States. When defining administrative standards, the European Commission starts from assuming that development standards should fit different models of public administration – a traditional Weber’s model of administration and a system based on New Public Management (Painter, Peters, 2009).

Of particular importance for the development and convergence of European administrative systems are the principles defined under the SIGMA programme, which provide basic guidelines for the development of public administrations in national systems. Civil service development guidelines are not legally binding; however, the European Commission uses them as benchmarks to measure progress towards membership.

In the context of future enlargement, the European Commission devotes special attention to and further elaborates the standards for the reform of public administration. The key principles set out in the said document of the Commission point to the course of administrative system development towards professionalisation.

The synthesis of standards identified by baselines within the SIGMA programme and those defined in the reports and other analytical documents of the Union and its institutions constitutes a reference framework for assessing the degree of administrative systems development, which is revised over time and adapted to the conditions of the acceding countries complementing it with new elements. The framework set out in 1999 was amended and made more specific in 2014 and 2017, respectively, by The Principles of Public Administration (SIGMA, 2017). The principles were complemented by a monitoring framework, making it possible to assess the state of affairs of public administration and the progress achieved. The key areas for which the working principles are defined include: 1) The strategic framework of public administration reform; 2) Policy planning and coordination; 3) Public service system and human resources management; 4) Accountability; 5) Service delivery; and 6) Public finances management.

The key assumption of the professionalisation of the administration is featured in the guideline relating to the need to establish and develop an efficient human resources management system. Merit-based recruitment of public officials, staff attraction and retention, professional development, and integrity measures all affect the effective performance and the achievement of the strategic goals of bodies and organisations.

The European standard for civil service development includes: 1) recruitment based on merit and equal treatment of candidates during the selection process; 2) prevention of direct/indirect political influence on managerial positions; 3) fair and transparent remuneration system; 4) efficient professional development system; 5) fair and effective performance appraisal system; 6) promotion/mobility based on objective and transparent criteria and merit; 7) established measures to promote integrity and prevent corruption; 8) working discipline; 9) clearly articulated reasons for the termination of employment.

The principle of depoliticisation is underpinned by the principle of professionalisation. It mainly involves the prevention of direct or indirect influences on managerial positions in the service. The criteria for the appointment to senior managerial public service positions and grounds for dismissal must be clearly specified by law and effectively applied. The selection and recruitment process for the senior managerial positions is based on the assessment of competencies, observing

the principle of equal opportunities. The setting up of an efficient civil service system assumes the existence of measures for promoting integrity, preventing corruption, and ensuring working discipline.

The rules of general administrative procedure guarantee legality, fairness, efficiency, equal treatment, proportionality, the proper exercise of discretionary judgement, openness, transparency, impartiality, objectivity, and legal protection. The rules concerning the annulment, amendment, and repeal of an administrative act are regulated in detail to ensure a balance between the public interest and the legitimate expectations of individuals. The process of administrative decision-making involves consultations with civil society. There is a contemporary tendency of cutting the 'red tape' and simplifying the administrative proceedings, which is underpinned by political and institutional responsibilities.

Discussion

The efforts of the international and European institutions are aimed at supporting the States in establishing a clear and consistent legal framework and enforcing the rule of law, legal certainty, legitimate expectations, professionalism, transparency, efficiency, effectiveness, equality, accountability, ethical conduct, and the set-up and application of integrated and connected elements of the human resources management system. Strengthening of measures and the development of international cooperation for the efficient prevention and suppression of corruption has been emphasized. Strengthening of institutional capacities is necessary in order to promote integrity and prevent corruption in the public administration. We speculate that main reform tendencies may include the following hypotheses:

- A perspective is a discussion between the Anglo-Saxon and Continental Legal systems divergence;
- A "distinctive" solution does not exist;
- Dynamic changes in society and their influence on legal systems should be debated;
- Changing role of public administration in national systems and prevailing public interest;
- Strong influence of international and regional organizations on public administration development in member states;

- Convergence of “common” administrative principles;
- Necessary adjustments and consideration of the actual needs and priorities and the national context should be considered;
- National administrations should critically analyse common principles;
- An effective implementation of common principles has been required.

International and European public administration principles (“common standards”)
1) The principle of legality (the rule of law), legal certainty, legitimate expectations;
2) Professionalism of public service;
3) Accountability;
4) Integrity of public officials;
5) Efficient policy planning and coordination;
6) Effective Human Resource Management system;
7) Governing rules on conflict of interest;
8) Effective control of public finances (external and internal audit);
9) Efficient service delivery;
10) Transparency;
11) Ethical conduct.

Given that it is aimed at the development of a common Europe “administrative identity”, it is crucial to assess whether the law is applicable in practice before adopting it, as well as to further evaluate whether it can be applied effectively.

Conclusion

By adopting common standards on the development needs of public administration developed by international and regional organisations, Member States improve their national administrative systems.

The documents of international and regional organisations promote the development of public administration in the Member States in the context of achieving the rule of law and strengthening institutional capacities. They further promote the principle of legality (the rule of law), professionalism, transparency, the principle of efficiency, effectiveness, equality, accountability, ethical conduct, and the achievement of better performance outcomes.

Member States are expected to align their national regulations with guidelines defined by international and regional organisations. These guidelines can be approached critically and analytically, taking into account the specific tradition of the national legal systems – legal context, political support for reform implementation, economic conditions, and organisational culture of public administrative bodies and organisations. Complete solutions do not exist.

Recommendations from international organisations cannot be implemented in the national system without the necessary adjustments and consideration of the actual needs and priorities and the national context. Furthermore, membership in the European Union and other organisations is not the only motivation driving changes in the public administration. A systemic and comprehensive reform of administration, at all levels, is a permanent process and an intrinsic need of every society. The analytical approach, the engagement of national experts in the process of incorporating and applying international standards represent both a challenge and an impetus to embrace modern standards and improve the functioning of the public administration.

Legal certainty, together with legal supremacy, implies that the law is implemented in practice. Therefore, it is crucial to assess whether the law is applicable in practice before adopting it, as well as to further evaluate whether it can be applied effectively.

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Konvergencija i simbioza principa razvoja javne uprave – uticaj međunarodnih i regionalnih organizacija²

***Apstrakt:** Inicijativom međunarodnih i regionalnih organizacija, podstiču se stalne promene i reforma sistema javne uprave u kontekstu ostvarenja vladavine prava i jačanja institucionalnih kapaciteta. Usvajajući zajedničke standarde, države menjaju i unapređuju upravne sisteme i harmonizuju najznačajnije segmente rada javne uprave. Pored uticaja i doprinosa Evropske unije i njenih institucija na razvoj i primenu upravnih standarda, od značaja su inicijative drugih međunarodnih i regionalnih organizacija - Organizacije ujedinjenih nacija, Saveta Evrope i drugih asocijacija. Standardi definisani aktima međunarodnih i regionalnih organizacija, usmereni su ka pružanju podrške državama za uspostavljanje jasnog i konzistentnog pravnog okvira i sprovođenje vladavine prava, razvoju dobro organizovanih sudskih, upravnih, bezbednosnih i drugih institucija, kao i razvoju građanskog društva koje doprinosi jačanju*

² Rad je nastao u okviru naučnoistraživačkog projekta Ministarstva prosvete, nauke i tehnološkog razvoja Republike Srbije (broj 179045).

vladavine prava i odgovornosti javnih službenika i institucija. U radu se ukazuje na značaj načela zakonitosti (vladavine prava), profesionalizma, transparentnosti, efikasnosti, odgovornosti i integriteta. Od posebnog je značaja depolitizacija uprave i puna primena principa meritornosti.

Imajući u vidu specifičnu tradiciju nacionalnih sistema – pravnu tradiciju, političku podršku za sprovođenje promena, ekonomski ambijent, organizacionu kulturu u organima i organizacijama javne uprave, od država članica se očekuje usklađivanje nacionalnih propisa sa smernicama definisanim od strane međunarodnih i regionalnih organizacija. Njihovom inkorporiranju i primeni, trebalo bi pristupiti kritički i analitički, bez preuzimanja „gotovih“ rešenja. Evropski i međunarodni standardi ne mogu imati punu primenu u nacionalnim upravnim sistemima, bez prilagođavanja i uzimanja u obzir stvarnih potreba i prioriteta. Preispitivanje i prihvatanje međunarodnih standarda predstavlja potrebu i izazov u procesu unapređenja rada javne uprave. Evropski sud za ljudska prava ima sveobuhvatan pristup određenju načela „dobre uprave“, polazeći od stanovišta da je u skladu sa načelom zakonitosti i vladavine prava od ključnog značaja efektivna primena pravnih pravila u praksi. Naučni doprinos rada, ogleda se u analizi i sintezi standarda razvoja javne uprave, definisanih od strane međunarodnih i regionalnih organizacija, kritičkom preispitivanju i pokušaju da se odredi zajednički evropski „administrativni identitet“.

Ključne reči: konvergencija, nacionalni upravni sistemi, evropski principi, javni interes.