EUROPEAN ADMINISTRATIVE LAW

(2014/2015)

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FICHA CURRICULAR / ACADEMIC ABSTRACT

SUBJECT: The Europeanization of Administrative Law as a Engine of Convergence between National Legal Orders: the Birth of a Cosmopolitan Method to Regulate Transnational Relations

SUMMARY: «European Administrative Law» [EAL] will be centered in a broad concept of normativity and of european public administrative which is not constrained to a descriptive study of the EU administration (in a strict sense). As a reciprocal convergence mechanism between national legal orders and national public administrations, EAL will be used as an excuse to think, in a broader and profound manner, about the urgency to conceive new structures of transnational pursuit of global public interests. Beyond the study of administrative organization and of the european administrative procedure, EAL will face the need to react and respond, in juridical terms, to the globalization of administrative situations, by means of special normative binding rules and principles but also through new mechanisms of transnational competence and transnational recognition of administrative ativitiy and court’s decisions. At last, students will also profit from a comparative analysis of several administrative systems, in order to identify and extract well-grounded “good governance” indicators.
I. CURRICULUM

PART I

THE EUROPEAN DIMENSION OF PUBLIC ADMINISTRATION

1. The EU institutional structure – attributions and competences

1.1. Introduction – distinction between public legal persona, organ and office holders
1.2. EU legal personality
1.3. EU attributions
1.4. Transnational nature of the EU organs
1.5. European Parliament
1.6. Council
   1.6.1. European Council
   1.6.2. EU Council
      1.6.2.1. General Affairs Council
      1.6.2.2. Specialized councils (specially, the ECOFIN)
   1.6.3. Committee of Permanent Representatives (COREPER)
1.7. European Comission
1.8. Court of Justice
1.9. European Ombudsman
1.10. European Central Bank
1.11. Distribution of competences between EU organs

2. The relation between the EU legal order and the national legal orders

2.1. National Law, European Law, International Law and Global Law
2.2. The primacy of EU Law
2.3. The relations with national constitutional binding rules
2.4. EU Law as a source of administrative normativity: the extension of the legality principle
3. The prosecution of the European administrative function

3.1. Typology of EU acts
3.2. The ownership of administrative competence
3.3. Direct administration
3.4. Indirect administration
3.5. Autonomous administration
3.6. The coordination between EU administration and national public administrations
   3.6.1. Homogenous administration (or European)
   3.6.2. Heterogenous administration (or national)
3.7. Mixed administrative procedures

4. European Administrative Law (EAL) general principles

4.1. The formation of the transnational general principles: the uprise of Global Administrative Law (GAL)
4.2. The principle of loyal cooperation
4.3. The principle of organizational autonomy
4.4. The principle of reliance presumption of national procedural rules
4.5. The principle of effective judicial review
4.6. The principle of procedural participation
4.7. The principle of access to the administrative documents

5. The implications over national public administrations

5.1. Internal organizational restructurining
5.2. The interpretation and application of EU administrative law
5.3. International and European administrative cooperation
5.4. Comitology
5.5. Continuous training of head-offices, officeholders and civil servants

6. On the way to a europeanized administrative procedure

6.1. Jurisdiccionary creation of general principles
6.2. Harmonization of national legal regimes
6.3. Uniformization: specially, the European Customs Code
6.4. Typology of procedures and its specificities
   6.4.1. Procedures before the homogeneous administration
   6.4.2. Procedures before national administrations
   6.4.3. Mixed procedures

PART II

THE OUTCOME OF GLOBALIZATION OVER THE ADMINISTRATIVE PROCEDURE

7. The transnational dimension of Administrative Law

7.1. Globalization and the reaction of national administrations
7.2. The decay of the territoriality principle and appliance of foreign, international and transnational Administrative Law
7.3. Transnational sources of Administrative Law
7.4. Network administrative systems

8. The Enlargement of procedural rights

8.1. Right to good administration: efficiency and sustainability
8.2. Right to participation
8.3. Right to access to administrative documents
8.4. Right to a rationale grounding
8.5. Right to a prompt procedure
8.6. Right to effective judicial review
8.7. Right to translation and of access to an interpreter
8.8. Right to the recognition of foreign administrative acting

9. Negotiation, signature and execution of contracts by public administration

9.1. European implications over public procurement
9.2. The launch of international competitions
9.3. The guarantees of competitors and contractors

10. Transnational Competence

10.1. The principle of greater effectiveness
10.2. Positive and negative conflicts of transnational competence between national administrations
10.3. Extraterritorial acting
10.4. Cross-border cooperation

11. Transnational recognition of foreign administrative acting

11.1. The prohibition of double burden
11.2. Modalities of transnational recognition
   11.2.1. Administration recognition
   11.2.2. Jurisdictional recognition
   11.2.3. Automatic recognition
   11.2.4. Conditioned recognition
   11.2.5. Specially, the recognition of qualifying documents
   11.2.6. Recognition of academic qualifications
   11.2.7. Recognition of professional qualifications and skills
   11.2.8. Recognition of permits to fly, driving and navigation licenses
   11.2.9. Recognition of hunting licenses and licenses to carry a firearm
   11.2.10. Recognition of commercial and industrial licenses
11.2.11. Specially, the recognition of certifying acts
11.2.12. Recognition of documents issued by foreign public entities
11.2.13. Recognition of documents issued by foreign private entities
11.2.14. Recognition of electronic documents issued by foreign entities

**PARTE III**

**COMPARED MODELS OF “GOVERNANCE” IN PUBLIC ADMINISTRATION**

12. Compared administrative systems

12.1. The european continental model of “executive administration” of French or objectivist inclination
12.2. The european continental model of “executive administration” of germanic or subjectivist inclination
12.3. The anglo-saxonic model of “judiciary administration”
12.4. The US presidential model with autonomous agencies
12.5. The Chinese centralized model
12.6. The islamic model of confessional State

13. Fundamental principles of administrative “good governance”

13.1. The principle of administrative efficiency
13.2. The principle of reasonable use of public resources
13.3. Mechanisms of self-control and external control
   13.3.1. Internal organization and management of public organs and services charged of european, international and transnational acting
   13.3.2. Methods and mechanisms fo european, international and transnational administrative negociation
   13.3.3. The promotion of internal democraticity and transparency of the international administrative cooperation structures
II. EVALUATION REGIME

Following paragraph b) of article 3 of the Evaluation Statute ("Regulamento de Avaliação de Conhecimentos nos Cursos de Especialização Integrados nos Mestrados de Bolonha", available at http://www.fd.ulisboa.pt/LinkClick.aspx?fileticket=_h0aqv1zibs%3d&tabid=184), the evaluation regime will be the following:

- Written paper on a specific subject of the curriculum: 100%

The written paper must be delivered until 30th April, 2015, according to the following requisites:

a) Maximum of 50 pages (excluding bibliography and other addenda);

b) Communication of the subject of the paper until 6th March, 2015, for approval;

c) Written in English;

d) Signature of a commitment of originality.

The evaluation will be personally notified to the students until the penultimate week of the school calendar. The students whose grades are negative (9 out of 20, or less) and the students whose grades are superior to 15 (16 out of 20, or more) will be submitted to an oral enquiry, according to the following rules:

a) Maximum of 15 minutes, per student;

b) Discussion exclusively centered on the subject of the written paper;

c) Public oral enquiry during the class timetable, on the last week of the semester.

The regular term non approved students can present themselves to an appeal season, according to article 7.1. of the Evaluation Statute. The appeal will be compound of an oral exam.
III. LITERATURE

Portuguese (General)

- ANA GUERRA MARTINS, Curso de Direito Constitucional da União Europeia, Almedina, 2004
- LUIS FILIPE COLAÇO ANTUNES, O Direito Administrativo sem Estado: crise ou fim de um paradigma?, Coimbra Editora, 2008
- ______, A separação de poderes no Tratado de Lisboa – Avanços e recuos na autonomização da função administrativa europeia, in «O Direito» (Cadernos), 5 (2010), 191-243
- SUZANA TAVARES DA SILVA, Direito Administrativo Europeu, Imprensa da Universidade de Coimbra, 2010

English (and Other Languages)

- AGUSTÍN GARCÍA URETA, Procedimiento administrativo y derecho comunitario, IVAP, Madrid, 2002

- ÁNGEL MORENO MOLINA, La Ejecución Administrativa del Derecho Comunitario – Régimen Europeo y Español, Marcial Pons, Madrid/Barcelona, 1998
- CHRISTINE LINKE, Europäisches Internationales Verwaltungsrecht, Peter Lang, 2001
- EBERHARD SCHMIDT-ABMANN, Der Europäische Verwaltungsverbund, Mohr Siebeck, Heidelberg, 2005
- EUGENIO PICOZZA, Diritto Amministrativo e Diritto Comunitario”, 2ª edição, Giappichelli Editore, Torino, 2005
- EVA NIETO GARRIDO/ISAAC MARTÍN DELGADO, Derecho Administrativo Europeo en el Tratado de Lisboa, Marcial Pons, 2010
- FRANCISCO VELASCO CABALLERO (org.), La Unión Administrativa Europea, Marcial Pons, 2008
- _____, Diritto Amministrativo Europeo – Principi e Istituti, Giuffrè, 2006
  editado por Herwig Hofmann,Alexander Tu’rk
- _____, Le droit administratif européen: entre l’observation et l’hypothèse, in «L’Actualité Juridique – Droit Administratif», numéro spécial («Droit

- **JEAN-BERNARD AUHY/JACQUELINE DUTHEIL DE LA ROCHE, Droit Administratif Européen,** Bruylant, 2007


- **JOSÉ ANTONIO MORENO MOLINA, El derecho comunitario como impulsor de la un derecho administrativo común europeo. La noción comunitaria de Administración Pública, in «Noticias de la Unión Europea», 169 (1999), 21-36**

- ______, *La Administración Publica Comunitaria y el proceso hacia la formación de un Derecho Administrativo Europeo común, in «Revista de la Administración Pública», 148 (1999), 341-358*

- **JÜRGEN SCHAWRZE, European Administrative Law,** Thomson, 2006

- ______, *Droit Administratif Européen, 2ème édition,** Bruylant, Bruxelles, 2009


- **MARIO CHITI, Derecho Administrativo Europeo,** Civitas, 2002

- ______, *Diritto Amministrativo Europeo,* Giuffrè Editore, Milano, 1999


- **MARIO CHITI/GUIDO GRECO (org.), Trattato di Diritto Amministrativo Europeo,** Giuffrè Editore, Milano, 1997

- **MARK TURNER/DAVID HULME, Governance, Administration, and Development: Making the State Work,** Kumarian Press, 1997
- **MUHAMMAD MUINUL/MOHAMMAD EHSAN**, *From Government to E-Governance: Public Administration in the Digital Age*, IGI Global, 2013
- **SANTIAGO GONZÁLEZ-VARAS IBÁÑEZ**, *El Derecho Administrativo Europeo*, 3ª edição, Sevilla, 2005
- **STEFAN KADELBACH**, *Allgemeines Verwaltungsrecht unter Europäischem Einfluß*, Mohr Siebeck, 1999
- **STEFANO BATTINI/GIULIO VESPERINI** (org.), *Lezione di Diritto Amministrativo Europeo*, Giuffrè, 2007