

4th Trans European Dialogue on Law vs. Management in Public Administration

UDK UDK: 35.071(4)(047)

The two most influential European professional associations of public administration – the Network of Institutes and Schools of Public Administration in Central and Eastern Europe (NISPAcee) and the European Group on Public Administration (EGPA) – held the fourth joint conference in the series of Trans-European Dialogue (TED 4) with the Austrian Chancellery as the local organiser in Vienna on 9–11 February 2011.

The format of the TED series brings together senior experts from different countries and regions, thus facilitating exchange of knowledge and intellectual stimulation throughout the NISPAcee and EGPA countries. There is a focus on dialogue and discussions, based on invited keynote presentations to start a debate in which participants contribute with the elements of their research. TED therefore offers a unique forum for scientific discussion among exclusively highly respected and only individually invited professionals from all over Europe. Invited individuals include policymakers, public managers and lawyers from academia.

The topic of TED4 was (administrative or public) Law vs. (public) Management, as designed and chaired on the event by the programme-organizing committee with professor Philip Langbroek (Netherlands), assistant professor Dacian Dragos (Romania), assistant professor Polona Kovač (Slovenia), Marton Gellen (Hungary) and professor Renate Meyer (Austria). In fact, the question of linking of a legal and a managerial rational seems to be a challenge, especially in the period of rapid reform. Law with PA was much discussed, in particular during the times of CEE's early transition; it is generally one of the key issues of Continental European Public Administration. It is also a central theme in Western European countries, especially the continental ones, where the State of Law, the Rechtsstaat,

or the Napoleonic states, are embedding public sector reforms. But a tension between lawyers, managers and policymakers remains.

Furthermore, in Europe there appear to be different positions for lawyers and managers in public administration in different countries. In some countries, the rule of law prevails as a quite recently reclaimed domain of civil society against the state. Policymakers and managers complain that law's inflexibility, procedures and rights prohibit the development of an effective and efficient public administration. In other countries, policymakers have sought for ways to make the decision-making proceedings more flexible and to circumvent established rights. This has also been expressed in the position of lawyers and managers in public administration. The debates on policymaking and policy implementation in public administration are still dominated by lawyers in some countries, and by managers in other countries. Both positions and backgrounds have led to different perspectives on public administration.

Several distinguished keynote speakers presented their views to further the debate among 43 selected and invited participants from almost all European countries (including the participants from former Yugoslavia, namely Croatia, Slovenia, Serbia and FYR Macedonia).

The first topic was introduced by professor Jean Bernard Auby (France), who exposed the changing perspectives of democracy in society as a consequence of the New Public Management, reflecting on the way national administrative laws combine search for further transparency, participation of citizens, etc. on one hand and managerial concerns on the other, requiring cost-reductions, externalisation, the use of more flexible types of regulation, etc.

According to professor Auby, reforms are twofold and carried out in both directions – societal changes influence the operations in PA and PA is a factor of change in society itself. With the introduction of the NPM in PA, there has been a shift so that today not merely demos (people, voters), but also the expertise of independent agencies is the source of representative democracy.

New forms of democratic accountability have been developed by externalisation, added professor Drewry (Great Britain). Additionally, the field of administrative law has expanded enormously, which, according to the participants in TED 4, leads to different tensions, for instance between limitations and need to control vs. need for flexibility, or between legal protection of the rights of individuals vs. efficiency of operations.

According to another keynote speaker, professor Stavros Zouridis (Greece /Netherlands), both public administration and administrative law keep

each other in a deathly entanglement, since administrative law can frustrate public administration considerably, but also vice versa. Therefore the role of judicial review in administrative matters is to replace the traditional »ultra vires« control, conducted by checking pure normative compliance with legislation, with judging whether outputs of administrative decisions meet the goals desired by basic legislation, since the administration is granted greater discretion.

The debate concluded at this stage by the orientation to the paradigm »new public governance« with deregulation but increased level of accountability of different actors on the field. We should continue by deregulation/delegalisation of public administration and administrative justice and simultaneously depoliticisation of administrative law to enable the full PA role in society, as wrapped up by professor Zouridis and professor Suway (Poland). Even certain impediments can be overruled from the point of view of constitutional law, since the doctrine of horizontal effects (Drittwirkung) covers private agencies operations too, emphasised dr. Patyi (Hungary).

The main conclusions led to the finding that law (i. e. lawyers) and management (i. e. managers) are inevitably two elements that have to work hand in hand as a wedded couple. Management has to be run to ensure PA operating legally, but must produce the regulatory feedback loop, concluded assistant professor Virant (Slovenia).

Furthermore, the participants agreed that the changing role of the state in society requires the development of PA, so there is no one-time reform but continuous modernisation. In this respect the presentation of professor Ivan Koprić (Croatia) as a key note speaker was particularly interesting, focusing on administrative technology and general administrative procedure from the perspective of challenges and changes in South-East Europe. The GAPA reforms in the SEE are seen as interplay between the rule of law tradition and political pressure on the rationalisation of public administration. Efficiency and economy of scales are, in most cases, already part of administrative proceedings, and in his opinion, the aims of the NPM are well reconcilable with the values of administrative law (legality, certainty, legitimate expectations). Of course, sometimes it may look as if administrative law frustrates administrative effectiveness, but that is very often also a question of the functioning of policymakers, managers and civil servants in public administration.

Some other participants argued that administrative law should facilitate the collision of values in public decision making, and procedures should be

adapted to effective decision making. As further pointed out by professor Nemeč (Slovakia), professor Caranta (Italy) and professor Dimitrijević (Serbia), the relation legality vs. efficiency should be regulated by proportionality according to the level of policy making with less rigidity on the more strategic processes.

Additionally, the Dutch ombudsman, dr. Alex Brenninkmeijer, offered the concept of fairness to be a mediator between legality and efficiency with an acknowledgment of the parties in administrative procedures (having contact in person, fair and respectful treatment of citizens, serious attention for citizens' interests, and their active involvement in decision making processes that concern them).

This demands a constant flexibility of both legislators and decision makers, which can be resolved if the managers as implementers of legislation provide continuous feedback loop to regulators (lawyers) to change the law afterwards according to societal reality and needs (for instance by reducing the time of decision making or regulating reduction of tax procedures if their costs exceed the tax collected, suggested professor Bouckaert (Belgium)). Nevertheless, there is a further theoretical issue to be discussed regarding the appropriate role and relations among law makers and managers in public administration to jointly provide the most effective administrative operations within modern society. The problem is of special importance if we are aware that the law is an institution and the institutions matter, but it is an open dilemma how long the law ensures the solution and when it begins to become a problem for effective and good administration.

The major dilemmas put forward will be developed by keynote speakers and other participants within reviewed scientific articles to be published in NISPAcee Journal in December 2011.

NISPAcee and EGPA are going to continue the TED series in 2012 in Budapest touching upon the interdisciplinary aspects of agencies as an »agencification phenomenon«. The idea of debating the most crucial current concepts in the theory and praxis of European public administrations is therefore quite alive on the European scale in order to jointly find different solutions from and for individual societal and legal frameworks.

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