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**Developing administrative law in Europe :**
**Natural convergence or imposed uniformity?**

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***2d round table : Common principles to national judicial protection and procedures***

**Contribution : The Impact of EU Law on Domestic Administrative Litigation**

## Abstract

***Introduction : Mapping the Issue***

I think it necessary to adopt a broad definition of what can be meant by “administrative litigation”:

- Obviously ignoring the monist or dualist character of each judicial system;
- Taking in consideration the institutions which, like the British “administrative tribunals”, are situated between pure administrative authorities and courts;
- Taking also into account the impact EU Law has on administrative liability and public contracts, even if, in some systems, corresponding litigation is not considered as belonging specifically to administrative litigation.

The path I will follow will start with a brief description of the reasons why EU Law has an impact on domestic law concerning administrative litigation (I), then go through a reflection on the ways and means by which EU Law interferes with national law and institutions concerning administrative litigation (II), and lead to some ideas concerning the directions in which EU law pushes national laws and institutions concerning administrative litigation (III).

***I. Why an Impact (of EU Law on national law concerning administrative litigation) at all?***

The answer is not too difficult to give. Notwithstanding the principle of procedural autonomy, EU Law cannot be indifferent to the effective application of its rules by national judges. And judges in charge of administrative litigation are a special concern in this respect since most of the EU law implementation is placed in the hands of national administrations.

Domestic rules and institutions concerning administrative litigation are an essential tool for the implementation, and the enforcement, of EU Law. In a related way, they are also, in fact, an essential way for the legal supervision of EU acts, which can be challenged before national administrative judges, even if pronouncing on their legality belongs finally to European judges.

***II. Ways and means of influence***

1. If we consider, firstly, the *areas in which EU law influences domestic administrative litigation*, we can notice a constant expansion.

This is partly due to the growing diversity, and complexity, of the administrative frameworks through which EU policies are implemented: shared administration, open method of cooperation, situations in which the implementation requires a "horizontal" coordination between national administration.

The expansion is also a consequence of EU courts jurisprudence admitting that EU Law principles must be applied by national courts not only within EU acts implementation strictly speaking, but also in all cases situated in the ambit of these principles. And it is also reinforced sometimes by "spillover" evolutions.

2. If we turn to the *instruments through which the influence of EU Law operates*, we notice at least two lines of evolution.

Initially, the impact of EU Law came from jurisprudence, while it tends now to derive more frequently from written legislation; the Aarhus Directive, the Services Directive, Procurement Directives, and so on.

But one must add that this evolution does not annihilate another one, concerning the fact that the impact of EU Law increasingly conveys general principles –and not just solutions specific to one field or one issue- : not only effectivity, but also right to a judge, impartiality, and so on.

### *III. In what directions is EU Law pushing national laws and institutions concerning administrative litigation?*

1. Let us consider, first, the impact EU law happens to have on the *techniques* of domestic judicial supervision of administrations

Here and there, EU Law leads national laws to adopt unusual solutions as regards: alternative dispute resolution in administrative fields, scope of administrative acts which can be challenged in courts, rules on evidence in administrative justice, and so on.

And we are aware that, in some cases, EU Law requirements have forced national judges to adopt solutions which were very much at odds with some prominent principles of their legal system: the "Factortame" case is probably the best example of this.

2. EU Law, secondly, has sometimes also an influence upon some basic *principles on which judicial supervision of the administration rests* in the corresponding legal system.

It occurs that, in order to comply with EU Law and to ensure its proper application, national administrative judges are led to comprehend in a different manner some of the principles they are used to referring to: their conception of norms hierarchy, their conception of legal force of judgments, for example.

On occasions, it even forces them to import new principles. Under the influence of EU Law, the principle of proportionality found itself accepted in legal systems in which it was unknown, in the same way as, in some jurisdictions, the "Francovitch" and "Köbler" jurisprudences imposed new developments in the law on state liability.

3. One can even say, thirdly, that EU Law has sometimes had an influence on *the very status of legal supervision of the administration* in the considered jurisdiction.

In some fields and some jurisdictions, EU Law impact has been the cause of some "judicialization" in administrative relations (in a sense of a more frequent resort to judicial challenges).

In some systems, EU Law influence encouraged a more general evolution towards « subjectivization » of judicial supervision of the administration, while this had traditionally more the character of an "objective" task (norm to norm control).

In some Member States, finally, EU Law influence has contributed to some kind of "emancipation" of administrative judges, helping them to feel freer and better armed in front of other national public powers: mainly because they possess the right –it is even a duty- to set aside their decisions where they think them to be incompatible with EU Law.

***Conclusion : Towards a European Administrative Justice System ?***

Because of the growing presence of EU Law and its implementation, in the same way as we are moving towards an everyday more integrated European administration, domestic administrative judges find themselves everyday more integrated in a European interconnexion of judges dealing with administrative issues: they are constantly in closer relations with EU courts, and will be in closer and closer relations with their counterparts in other Member States, because of expansion of administrative transnationalities.

The convergence thus fostered is largely a « natural » one, caused in a rather mechanical way by European integration. However,

one can observe that national laws concerning administrative litigation remain significantly different on various aspects, in terms of organization, of procedure and of general principles. One cannot speak, here, of “imposed uniformity”.