

## THE EUROPEANIZATION OF THE CIVIL SERVICES IN THE COMMUNITY TERRITORY

Lecturer PhD Student Ciprian UNGUREANU  
" Ștefan cel Mare" University of Suceava, Romania  
[ciprianu@seap.usv.ro](mailto:ciprianu@seap.usv.ro)

### **Abstract:**

*Europeanization of the civil services it's about a few main principles as transparency, effectiveness and efficiency. A very important process of Europeanization of civil services regards the traditional aspects of careers according to the principle of freedom of movement of the work force. Even if people believes that Europeanization has nothing to do with civil services in reality it is much tied with public administration. The European Community can not dictate the law governing each civil service but can have effects on national civil services. In reality we can't say exactly how European Union influences national administrations.*

*Despite these Europeanization of the civil services we must not underestimate the importance of national administration traditions. The Europeanization of administrations mean besides other principles, convergence of administrative structures and values.*

*We can say that Europeanization it's not a result from a single cause but also the product of the interaction between European policy and national law.*

**Keywords:** Europeanization, civil services, careers, EU policy

**JEL Classification:** K39

### **1. PRINCIPLES OF EUROPEANIZATION**

The first real form of Europeanization of the civil services considers the following principles: firstly, fundamental principles(1), stated by Article 6 of the Treaty of Nice that stipulates that the EU is based on the respect for fundamental rights; secondly, principles such as transparency, effectiveness and efficiency that might be established by the Court of Justice.(2)

The concept of "good administration" has been acknowledged by Article 41 of the Fundamental Rights Chapter of the Treaty of Nice. This right for good administration has been introduced by the Government of Sweden (3) and consequently included in the Constitutional Treaty.

Article III-398 stipulates that: "in accomplishing their own missions, the Union institutions, offices and agencies must have the support of an efficient and independent European administration". Indeed, the principle has been developed in the context of the European Code of good administrative conduct, introduced by European Ombudsman in 2002(4).

However, less specifically, this code only applies to civil servants and Community institutions.

The most important effects are mainly considered as linked to the provisions governing non-discrimination and equality as stipulated in Article 13 and 141 of the EC. Article 141 of the treaty (5) has important repercussions for civil servants in the member states and thus generated "debates on equality" that have long been lead by national philosophies.

The so-called Bundeswehr (6) judgement has been and still is a measure of the extent to which the European law can intervene in the national civil service regulations. According to this judgement, women who may be excluded from a certain profession, have been accepted, based on this judgement of the European Court of Justice. The rejection of women in certain professions was a violation of the provisions of the Council Directive 76/207/EEC of February 9<sup>th</sup> 1976 which referred to the implementation of equal treatment for men and women with regard to labour market opportunities and treatment at work. The European Court of Justice confirmed in the Dory case (7) that compulsory military service for men is not affected by the directive.

## Article 141

The Council Directive 75/117/EEC of 10 February 1975 on the approximation of the EU laws in applying the principle of equality between men and women.

The Council Directive 76/207/EEC of 9 February 1976 on the equal treatment for men and women with regard to labour market opportunities treatment at work.

The Council Directive 79/7/EEC of 19 December 1978 with regard to the progressive implementation of the principle of equality between men and women in social security issues.

The Council Directive 2000/43/EEC of 29 June 2000 with regard to the implementation of equal treatment between people, regardless of ethnicity.

The Council Directive 2000/78/EEC of 27 November 2000 with regard to the establishment of a framework for equal treatment in the event of employment.

There is a large number of decisions of the European Court of Justice, with regard to payment for men and women from civil services. Article 141 of the EC Treaty and the Directive 75/117/EEC of 10 February 1975 stipulate the application of the principle of equality between men and women. ECJ has analysed each case in a different manner, according to the different circumstances involved. There is no particular trend that would suggest that the ECJ will accept the discrimination against women as a general rule, as seen in the Gruber case.<sup>(8)</sup>

The national provisions contradict the principle of equal payment, if the civil servant can prove that the period spent taking care of the children is not included in the number of years of actual work.

A German case has played an important role in the past few years. This was the Lakeberg case (9), involving a teacher from North-Rhine. This teacher had been working part-time, teaching 15 hours a week. In December 1999, the plaintiff worked an extra 2,5 hours, on request, but hasn't been paid. This occurred because the regulation does not allow teachers to be paid for overtime, unless these hours exceed by three the number of hours taught monthly (10) ECJ ruled that this provision could breach Article 141 of the EC Treaty and Article 1 of the Directive 75/117/EEC of 10 February 1975, under the following conditions:

- ✓ Full-time employees and part-time employees do not receive equal treatment
- ✓ This inequality affects women more
- ✓ This unequal treatment cannot be justified by a certain objective but can only be described as sexual discrimination;

The European Court of Justice confirmed that the first condition has been found. In making this decision, the Court based its arguments on the fact that the payment for overtime work should be regarded as separate from basic salary. Indeed, the duration of work is proportionally higher than that of full-time employees: three hours means approximately 3% of one person's 98 hours, but approximately 5% of another person's 60 hours a week work duration. In this particular case, the unequal treatment was generated because when the issue of overtime arose, these hours are not proportionally reduced for someone who works part-time. In summarising their decision, the ECJ has quoted its own case study of equal treatment for full-time or part-time employees in relation to the volume of work they performed, according to Art. 141 of the EC Treaty and Art. 1 of the Directive 75/117/EEC of 10 February 1975 with regard to the details of the equal pay principle.

On the other hand, as far as the retirement age is concerned, there may be differences between men and women. Article 7 of the Council Directive 79/7/EEC of 19 December 1978 with regard to the progressive implementation of the equal treatment principle for men and women in social security issues, grants the Member States the right to establish the retirement age outside the scope of the Directive. However, in order to assess whether different retirement ages for men and

women can be justified, one must first establish if the national regulations observe the rulings of the Council Directive 79/7/EEC. Differential treatment is permitted if it can be somehow justified.

The principle of gender-based equality is also subject to limitations. In the past, the European Court of Justice has concluded in some cases – the Johnston case (11), the Sirdar case (12) – that gender can be an essential prerequisite for certain professions, such as prison guard or activity in certain combat units. Thus, a certain member state can restrict these activities to men or women, along with professional training needed for this kind of activities. However, the principle of equality covers a much larger interest area than just that of equality between sexes. Thus, according to Article 2 (2) of the Directive 2000/78/EEC (13), direct discrimination appears when a person is treated less favourably than another. One of the issues mentioned in Article 1 is age. In the future, a candidate will not be forbidden to apply for a job if he or she does not meet the age requirements. This will be otherwise considered direct discrimination.

## 2. THE EUROPEANIZATION OF CAREERS

A second process of Europeanization of civil services deals with the traditional aspects of careers according to the principle of freedom of movement of the work force. The provisions allow waivers for civil services, as stipulated in Article 39 (4) of the EC treaty.

The strict interpretation of Article 39 (4) of the EC Treaty by the European Court of Justice allows for a wider interpretation of the obligations in order to insure freedom of movement. The Statement of the European Commission of December 11<sup>th</sup> 2002 (14) stipulates that each national in a member state has the right to work in another member state. Using the interpretation of the concept of “worker” as stated by the European Court of Justice, the Commission defines it as “any person considered as honest and who works efficiently under the guidance of another person and is paid for that particular activity”. Moreover, the Commission clearly states that state employees and public sector employees are also workers in this context. Consequently, a placement trainer tends to be a professional trainer who teaches some classes and is paid for this activity, but is thus regarded as a worker, according to Article 48 of the EC Treaty (15).

The Court specified in 1980 that the efficiency and scope of the Treaty provisions on the freedom of movement of the work force is not restricted by the interpretations of the concept of public service.(16)

There have been constant debates on the boundaries of the concept “activity in the public service”. The diplomatic service, the judicial system, the armed forces and the police forces are certainly included. Consequently, the Member States may restrict the access to these positions against foreign civil servants. On the other hand, forbidding an European citizen to apply for a certain position in a foreign Ministry, for instance, would not meet the requirements of the European Court of Justice, by observing Article 39 of the EC Treaty.

The statement of the Commission from December 11<sup>th</sup> 2002 is very clear with regard to this particular aspect: “specifies functions of the State and similar structures such as the armed forces, the police, the judicial system and the diplomatic bodies.” These positions may not be restricted to the nationals of the hosting Member States(17). This shows the transition from a basis sector to a job system and a profession system (18.) The European Court of Justice recently concluded that the presence of a foreign official will not affect the interests of a Member State(19).

According to estimations, 60-90% of civil services positions are subject to the provisions of the freedom of movement as stipulated in Article 39 of the EC Treaty. In other words, 10-40% of the civil services positions imply the involvement in using the power assigned by the public law.

The opening of the public sector to civil servants and the employment of other applicants from other Member States has some kind of a domino effect. The first consequence is that it is necessary to draw up a clear job and career system in order to decide whether or not the gates must be opened for other nations as well. A series of measures must be introduced in order to guarantee the mutual recognition of qualifications, of experience, performance and also allow the access and embedding in the ranking and hierarchy systems, all these leading to a revaluation of the existing

systems. Finally, the opportunities must be created for civil servants in order to be internationally mobile in the EU and these aspects have repercussions on social security and the pensions system (20).

#### Article 39 of the CE Treaty

The EEC regulation no. 1612/68 of 15 October 1968 on the freedom of movement of workers in the Community.

The EEC Regulation no. 1408/71 of June 14<sup>th</sup> 1971 with regard to the enforcement of the social security scheme for employees within the Community, according to Regulation no. 1606/98 of June 29<sup>th</sup> 1998.

The Council Directive 89/48/EEC of December 21<sup>st</sup> 1988 with regard to the general system for the recognition of higher education degrees with a duration of at least three years.

The Council Directive 92/51/EEC of June 18<sup>th</sup> 1992 with regard to a general system for the recognition of professional training.

The Burbaud decision (21) of September 9<sup>th</sup> is a symptom of this effect. It is stipulated that a Portuguese national with six years of experience is entitled to apply for an administrator position in a hospital in France without any preliminary examination. However, this request for recognition and acknowledgement of experience in another Member State has been confirmed by the European Court of Justice ever since 1994 (22), this regulation being necessary in order to differentiate the career from accession by means of examination, even if this requirement is an essential prerequisite of the French civil services. There are many opinions that support a wide range of restrictions. Some of them refer to sovereignty: the protection of national identity and of the trust the citizens have in the State, these require that certain activities be performed by the citizens; while fulfilling their duties, foreigners may be subject to loyalty conflicts, especially in the military field. Along with the introduction of the European citizenship, it is becoming increasingly difficult to accept that citizens of the EU could experience conflicts of interest and thus jeopardize the security of another Member State.(23)

It is interesting to mention that there is a political and legal residence of the European Court of Justice with regard to Article 39 (4). A number of member States hold a very broad definition of the positions covered by the derogation and hence the restrictions for their own citizens. However, the formal mobility agreements established by the member States already cover professional fields. The police exchanges via EUROPOL, as well as the military exchanges, demonstrate the space between the principle of derogation from the provisions of Article 39 (4) of the EC Treaty. The exchange activities in the Ministry of Foreign Affairs between France and Germany could be mentioned in this context; certain diplomatic exchanges go back as far as 1963 at the Elysee treaty. The concept, according to which the ability of a civil servant is necessary, is related to the fact that citizenship is becoming less and less relevant (24).

A statistical analysis could be conducted in order to analyse the real effects of the strategy of Europeanization of careers, mainly restricted by linguistic difficulties. Taking into consideration the very limited mobility, estimated between 1 and 5%, especially in the fields of education and health – which have evolved in the 1988 campaign(25) - the saying “much ado about nothing” applies rather well.

## CONCLUSION

The first real form of Europeanization of the civil services considers the following principles. Firstly, fundamental principles, are the ones stated by Article 6 of the Treaty of Nice. Secondly, there are principles such as transparency, effectiveness and efficiency that might be established by the Court of Justice. The so-called Bundeswehr judgement has been established to measure the extent to which the European law can intervene in the national civil service regulations. Another principle it is the gender-based equality. The article mentions a few case studies very

important for these area of studies. There are many opinions that support a wide range of restrictions. Some of them refer to sovereignty: the protection of national identity and of the trust the citizens have in the State, these require that certain activities be performed by the citizens; while fulfilling their duties, foreigners may be subject to loyalty conflicts, especially in the military field.

#### NOTES:

- <sup>(0)</sup> Speer B, *Die Europäische Union als Wertegemeinschaft, Die Öffentliche Verwaltung*, No. 23, December 2001
- <sup>(2)</sup> Lais M, *Das Recht auf eine gute Verwaltung unter besonderer Berücksichtigung in der Rechtsprechung des Europäischen Gerichtshofes*, No.2 2002; OECD-PUMA, *European Principles for Public Administration*, No.27, 1999
- <sup>(3)</sup> *Rules and Principles of Good Administration in the Member States of the European Union*, Stockholm, 6-7 December 2004
- <sup>(4)</sup> European Ombudsman, the European Code of good administrative conduct, 2002
- <sup>(5)</sup> Art. 141 of the EC Treaty on the equality between men and women
- <sup>(6)</sup> The Kreil case, ECJ, C-285/98, 11 January 2000
- <sup>(7)</sup> The Dory vs Germany case, ECJ, C-186/01, 11 March 2003
- <sup>(8)</sup> The Gruber case, ECJ, C-249/97, 14 September 1999
- <sup>(9)</sup> ECJ, C-285/02, 27 May 2004
- <sup>(10)</sup> Paragraph 78 A of the Law of civil services in the North Rhine
- <sup>(1)</sup> ECJ, C- 222/84, 15 May 1986
- <sup>(2)</sup> ECJ, C- 273/97, 26 October 1999
- <sup>(3)</sup> The Council Directive 2000/78/EEC of 27 November 2000 on the establishment of a framework for equal treatment in the case of employment.
- <sup>(4)</sup> The Statement of the European Committee, „free movement of workers: reaching the benefits and potential”, Brussels, 11 December 2002
- <sup>(5)</sup> ECJ 31 July 1986, C.66/85, Lawrie-Blum vs Land Baden-Württemberg, ECR, p. 2121
- <sup>(6)</sup> Decision of 17 December 1980, Comisia vs Belgia
- <sup>(7)</sup> COM 2002 694 final
- <sup>(18)</sup> Lemoyne de Forges, J.M. *Exigences communautaires et exigences manageriales se rejoignent-elles?* AJDA, 27 October 2002, p. 1920
- <sup>(9)</sup> ECJ, C- 405/01, Colegio de Oficiales, the decision of September 30th 2003; ECJ, C - 47/02, Anker, decision of September 30th 2003
- <sup>(0)</sup> See Ziller J, „EU Integration and Civil Service Reform,”, *Preparing Public Administration for the European Administrative Space*, SIGMA, op. cit; ECJ, September 2003, Burbaud vs the Ministry of Work and Solidarity, C- 285/01
- <sup>(20)</sup> The case C- 419/92 Scholz ECR 1994, the case C-15/96 Schoning, the case C-187/96, Cominia vs Greece
- <sup>(21)</sup> See Kammerer J A, „Europäisierung des nationalen Dienstrechts”, *Europarecht EUR*, No. 1, 2001
- <sup>(22)</sup> Demmke C, Linke U, „Who is nation and who is european? Exercising public power and the legitimacy” Art. 39 4 EC, EIPASCOPE, No.2/2003
- <sup>(23)</sup> The freedom of movement for workers and access to employment in the public service
- <sup>(24)</sup> Speer B, *Die Europäische Union als Wertegemeinschaft, Die Öffentliche Verwaltung*, No. 23, December 2001
- <sup>(25)</sup> The Kreil case, ECJ, C-285/98, 11 January 2000

#### BIBLIOGRAPHY:

1. Council Directive 2000/78/EEC of November 27<sup>th</sup> 2000 on the establishment of a framework for equal treatment in the event of employment
2. Lais M, *Das Recht auf eine gute Verwaltung unter besonderer Berücksichtigung in der Rechtsprechung des Europäischen Gerichtshofes*, No.2 2002; OECD -PUMA, *European Principles for Public Administration*, No.27, 1999
3. Lemoyne de Forges, J.M. *Exigences communautaires et exigences manageriales se rejoignent-elles?* AJDA, 27 October 2002
4. ECJ, C- 405/01, Colegio de Oficiales, the decision of September 30<sup>th</sup> 2003; ECJ, C- 47/02, Anker, the decision of September 30<sup>th</sup> 2003

5. ECJ , C- 222/84, 15 May 1986
6. ECJ, C- 273/97, 26 October 1999
7. Kammerer J A, „Europainsierung des nationalen Dienstrechts, "Europarecht EUR, Nr. 1, 2001
8. Rules and Principles of Good Administration in the Member States of the European Union, Stockholm, 6-7 December 2004
9. Speer B, Die Europäische Union als Wertegemeinschaft, Die Öffentliche Verwaltung, No 23, December 2001