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EUROPEAN INTEGRATION, ADMINISTRATIVE  
LEGISLATION REFORM AND ADMINISTRATIVE  
SYSTEM COMPATIBILITY

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EUROPEAN INTEGRATION,  
ADMINISTRATIVE LEGISLATION REFORM  
AND ADMINISTRATIVE SYSTEM COMPATIBILITY

"Europe is more than a mere geographical concept"\*

I. Introduction

Within the general framework of the present state of affairs, as well as future tendencies in the dynamic integration/decentralization<sup>1</sup> processes in Europe, administrative legislative reform and administrative system compatibility focus into attention, particularly in regard to "supra-national" legal integrative instruments of the European Community<sup>2</sup>.

The deliberation on administrative legislation reforms and administrative system compatibility implications in present and future European integration processes, generally speaking, may be followed on two basic lines of investigation: a) from the aspect of the integrated European entity (i.e. the "community"); or b) from the aspect of the individual European unit of the entity (i.e. the "member state"). Furthermore, two more general lines of deliberation of the issue of administrative legislation reforms and administrative system compatibility can be recognized and followed: c) from the aspect of a European individual unit in relation to a European entity (i.e. "European non-member state"); as well as d) from the aspect of a non-European individual unit in relation to a European entity (i.e. "non-European non-member state").

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\* The Council of Europe - Aims, Operations, Activities, Directorate of Press and Information, Strasbourg, 1979.

<sup>1</sup> Manuel Balado Ruiz-Gallegos: "Decentralization and Co-Ordination of Administration - Two Techniques Serving the General Interest", International Review of Administrative Sciences, Volume 56, No. 2, June 1990, pgs. 267-284.

<sup>2</sup> Nota bene: Due to the character of this discourse, we see it as practical to concretely refer to the European Community each time European integration is mentioned, unless, of course it is otherwise stated.

Having this in mind, we deem it both of general and practical interest to the present and future debate on administrative legislation reforms and administrative system compatibility and its implications on European integration (particularly in regard to the European Community), to indicate and, to the permissible extent of this occasion, elaborate a selection of aspects of these issues concerning "European non-member states", i.e. European countries formally not incorporated into the major European integration processes, but substantially and vitally interested in the process and results of these developments. The main motive for this approach may be, inter alia, found in the "unexpected" intensity and dynamism of recent developments in Eastern and Central Europe that, in our opinion, not only logically and academically justify the incorporation of these issues in the general deliberation, but represent a need to set some form of "guidelines" that may be referred to, in the course of administrative legislation reforms and administrative system compatibility transformation of the European non-European Community member countries. The latter argument being particularly significant in conditions when most of the European non-European Community countries have already implemented (or are on the verge of implementing) more-or-less substantial market-oriented economic reforms, as well as democratic parliamentary reforms of the respective political systems. Thus, this leaves the field of administrative legislation reforms and administrative system compatibility in European integration processes open to debate.

It is within this context, i.e. within the framework of a wider comparative approach to the administrative implications of regional economic integration in Europe<sup>3</sup>, that we would like to emphasize and to an extent elaborate the "legal aspects" of the issue of "administrative legislation reform" and "administrative system compatibility" in regard to European non-European Community countries.

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<sup>3</sup> IISA: "Evolution Economique et Reforme Administrative", Institute International des Sciences Administratives, Bruxelles, 1986.

## II. Common European Community Law

Regarding the legal system and legislative framework, the European Community represents a "voluntary association" of member states, based on a structure of Common European Community Law, that the individual member-states recognize, and ultimately, to which they submit to. From the aspect of integration, it can be said that the system of Common European Community Law (or simply "European Law"), is one of the principle and fundamental integrative instruments of the European Community. In this respect, the European Community also has immanent features of a "legislative community", i.e. a particular legal entity vested with the capacity of formulating legally binding general norms of conduct. European Law is created within the framework of the European Community legal institutions in a variety of legal document forms (e.g. regulations, directives, decisions etc.), depending on the intent and character of the policy to be implemented. Consequently, the European Law is enforced by means of a more-or-less traditional mechanism of implementation, e.g. by formulating rights and obligations to be applied by the subject that is directly or indirectly concerned. The specific feature of European Law is that it may be applied not only to the member-states (and its legislative, executive, administrative and other legal bodies), but also directly to the citizens of the European Community, as well.

As it is well-known, the traditional "legalistic" concept of achieving social regulation and integration by means of "enforcing legal norms", is directly related to the "Rechtsstaat"<sup>4</sup> model of the mid and late nineteenth century. Nevertheless, it should be noted that in a extremely complex "post-legalistic" social, economic, technological and political environment, law and legislative practice as an instrument of integration may very often be over-rated and over-used<sup>5</sup>. Excluding other means of integration, and over-emphasizing the

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<sup>4</sup> Robert von Mohl: "Enzyklopedie der Staatswissenschaft", Tübingen, 1859.

<sup>5</sup> Dragoljub Kavran: "Laws and Regulations on Government Information Systems", Administrative Innovation Series, United Nations Department for Technical Co-operation for Development, United Nations, New York, 1988.

legal factor, has proved to result in various forms of "hyper-normativism" that not only undermines the efficiency of law and legislative institutions, but threatens to paralyze the legal (and particularly the administrative) system as a whole<sup>6</sup>: recent developments in Central and East European countries more than confirm this fact. In the developed post-industrial European countries, it was the post-legalistic approach that brought about interests in the market mechanism, as an alternative approach to the European integration dilemma. It is, for example, argued that the application of the market mechanism as an instrument of European integration achieves flexibility and competitive selection, and is very efficient, e.g. in regard to the elimination of economic barriers within the Community. Nevertheless, it is also argued that apart from very positive effects, the market mechanism as an integration instrument has an inherent negative feature, namely that of potentially creating grave "disbalances" and "disproportions" within the system. Consequently, the preceding statements should not be assessed as opposing law and legislation as effective integration instruments, but as a need of serious consideration as to which legal instruments and institutions would be most adequate to achieve the aims of European integration in regard to the unification and harmonization of the national legislative systems of the members states of the European Community.

On the basis of these summary reflections on European integration processes, viewed from the aspect of law and legislation as a factor of European integration, it may be concluded that the consistency and efficiency of a body of law related to the regulation of integration processes in the European Community, must respect the delicate balance of the strategic integration policy of the Community, on one side, as well as preserving the particular interest of the member-states, on the other. Recent trends in regard to the European Community, notably in the rulings of the Court of Justice, however, indicate that this sensitive balance has been "disrupted", and that legal

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<sup>6</sup> Stevan Lilić: "Modern Administration, The Legal State and Information Technology" (in Serbo-Croatian), Savezni sekretarijat za pravosudje i upravu i Savezni zavod za unapredjenje uprave, Beograd, Br. 33, 1989, pgs. 14-29.

priority has shifted in favor of the (European) Community, thus reflecting the general policy that "European Law", represents a significant integration instrument.

### III. Administrative Legislation Reforms and Administrative System Compatibility in Regard to European Non-Community Members

In light of the initial statement set forth in this paper, we would like to consider administrative legislation reforms and administrative system compatibility in European countries not formally incorporated into European integration processes, but nevertheless a natural constituency of the European social, economic, technological, historical and geographic environment.

As mentioned, the general framework of consideration suggests that this particular topic be deliberated from the aspect of initiating and implementing administrative legislative reform and achieving administrative system compatibility in the European non-European Community countries, in direct relation to the present and future integration policy in Europe, particularly the principles and development of the European Community legal order, its law and legislative institutions. In this respect, the following arguments should be considered.

a. European integration processes cannot be interpreted only as compulsory responses to American and Far East economic and technological competition and pressures<sup>7</sup>. Integration in Europe is also the result of autonomous development patterns of both economic and administrative systems in this region. The developed countries in Europe have achieved the level of social, human rights and technological development, that sets them within the general framework of post-industrial<sup>8</sup> and information societies<sup>9</sup>. On the other hand, countries in Europe still on levels of mid and late industrial development, as well as those in early stages of

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<sup>7</sup> Randal Baker, Julie Bivin Raadschelders: "Reshaping the Old Order - The European Community, The United States and the New Century", International Review of Administrative Sciences, Volume 56, No. 2, June 1990, pgs. 285-302.

<sup>8</sup> John Kenneth Galbreith: "The Affluent Society", Third, revised edition, Penguin Books, Harmondsworth, 1979.

<sup>9</sup> Daniel Bell: "The Coming of The Post-Industrial Society", Basic Books, New York, 1973.

high technology developments, will doubtlessly need to consider European development and integration tendencies, not only in respect to their general social and economic development strategies, but also in regard to administrative legislation reforms and administrative system compatibility, as well. Within this dynamic social and economic environment, the recognition of the need of the administrative systems of European non-European Community countries to adapt to European integration processes is prerequisite for the active participation, cooperation and integration of these systems into European integration processes. Administrative legislation reforms and administrative system compatibility should be aimed at setting the basis for the potential future transformation of the respected administrative system and their organizational and functional incorporation into "supra-national" structures. Comparatively speaking<sup>10</sup>, the transformation of administrative systems should also be aimed at undertaking (functional and organizational<sup>11</sup>, technological<sup>12</sup> and personnel<sup>13</sup>) reforms that are in line with achieving higher standards of administrative efficiency.

b. Another consequence of European integration (in regard to administrative systems of European non-European Community countries), is the consequent integration of decentralized administrative systems into organizational and functional forms of a higher order. This is due to the fact that increased complexity, and particularly the "informatization" of society, have practically rendered centralized directing, managing and

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<sup>10</sup> Gerard Timsit: "Administrations et des états: étude comparé", Presses Universitaires de France, Paris, 1987.

<sup>11</sup> James C. Emery (Editor): "Organizational Planning and Control Systems - Theory and Technology", Columbia University, Collier-Macmillan Limited, London, 1969.

<sup>12</sup> Jean-Paul Baquiast: "Nouvelles Technologies et Reforme Administrative", Revue Française d'Administration Publique, No. 37, Paris, 1986, pgs. 9-16.

<sup>13</sup> Heinrich Reinemann: "Organization and Information Management"; "New Technologies and Management - Training The Public Service For Information Management, IIAS, Brussels, 1987, pgs. 9-28.

control of the administrative processes obsolete<sup>14</sup>. The traditional administrative structure is inflexible, inefficient and inadaptatable to the dynamics of the changing environment. To achieve integration of territorial administrative systems that is compatible to the tendencies in the developed European countries, hierarchical models of organizational and functional integration must give way to new forms<sup>15</sup>, e.g. "modular" integration patterns, that enable multiple communications with other "internal" (sub)systems within the system, as well as with other "external" systems (e.g. the supra-national administrative organizational patterns)<sup>16</sup>.

c. European integration processes also have a significant impact on the perception and quality of human rights<sup>17</sup>, that should be taken into account in the present and future administrative legislation reforms and administrative system compatibility in non-European Community countries. The legalistic principle of legality, expressed through the ideal "that all citizens are equal before the law", has historically played a crucial role in legally institutionalizing (particularly in regard to judicial and administrative procedure), the relation between the citizen and the state (administration)<sup>18</sup>. The greatest moral value and practical effect of the "equality" principle being the (legal) protection of the citizen from the foul actions of state regimes. Today, however this traditional bureaucratic principle is considered one-sided and obsolete: it

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14 Jean-Paul Baquiast, Wim van de Donk: "Cultural Impact on Informatization in Public Administration, International Review of Administrative Sciences, Volume 55, No. 4, December 1989, pgs. 559-568.

15 Peter Abell: "On The Possibility of Non-Hierarchical Organization" (in English), Zbornik Pravnog fakulteta u Zagrebu, br. 3-4, 1987, pgs. 441-452.

16 Lovro Šturm: "The Significance of System Management for Public Administration" (in Croatian), Zbornik Pravnog fakulteta u Zagrebu, br. 3-4, 1987, pgs. 429-440.

17 Council of Europe - The European Convention on Human Rights, Directorate of Press and Information, Strasbourg, 1978.

18 Stevan Lilić: "Information Technology and Public Administration in Yugoslavia - The Citizen's Influence", Information Age, London, Vol. 12, No. 1, 1990, pgs. 9-14.



is argued that for the principle of legality to be legitimate in a modern post-legalistic administrative environment, apart from the law, the consent of the citizen is also needed<sup>19</sup>. This is the result of the higher level of information and knowledge the citizen has access to, as well as ideological and interest independence of the citizen in communicating with the administrative system.

d. Apart from organizational features of the administrative legislation reforms and administrative system compatibility in regard to European integration processes, functional features must be considered as well. Due to need of efficient regulation of social, economic and technological processes, modern administrative systems show a general tendency towards substituting traditional authoritative instruments of administrative power, with higher forms of achieving micro and macro level social regulation<sup>20</sup>. Generally speaking, it may be concluded that the use of administrative force is counter-proportional to the level of general social and economic development<sup>21</sup>. The case of "European Law" clearly supports this statement. It can be said that repression today is the feature of underdeveloped social and economic systems, and leads to the phenomena of "vicious bureaucratic circles"<sup>22</sup> (once applied, repression leads to more repression, which agitates the problem even more, then more repression is applied, and so on). Thus, the development of modern administrative systems is less and less

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<sup>19</sup> Serge Alain Mescheriakoff: "Legality, Efficiency and Equality - The Vagaries of Administrative Legitimacy", International Review of Administrative Sciences, Volume 56, No. 2, June 1990, pgs. 305-326.

<sup>20</sup> Pusić, Eugen: "Social Regulation - The Limits of Science and Experience" (in Croatian), Globus, Zagreb, 1989.

<sup>21</sup> V.V. Moharir: "Administration Without Bureaucratization- What Alternatives?" International Review of Administrative Sciences, Volume 55, No. 2, June 1989, pgs. 165-182; Onorato Sepe: "Administration Without Bureaucratization", International Review of Administrative Sciences, Volume 55, No. 2, June 1989, pgs. 199-210.

<sup>22</sup> Michel Crozier: "The Bureaucratic Phenomenon", University Press, Chicago, IL, 1963.

oriented toward the use of power and force, as there is objectively less possibility of compulsory social regulation.

e. A specific question to be addressed in the context administrative legislation reforms and administrative system compatibility and European integration is the issue of the efficiency of administrative systems. Generally speaking, the more there are technological factors present in administrative systems, the higher the level of the efficiency of the system. Nevertheless, in some European countries, particularly those in state of "crisis", an opposite tendency can be detected. Times of crisis generate a tendency of extensive "administrating", primarily due to the general inefficiency of the social and economic system. Inefficiency gives rise to the need of more authority, but authority itself does not resolve the problem. This model, logically, requires an authoritative administrative system, as authoritative administrative decisions can only be implemented by means of political force. Therefore, authoritative administrative systems cannot substantially and definitively resolve (economic, social etc.) crisis by mere "authoritative efficiency", as such a concept, particularly if it eventually receives political support, can easily become the main obstacle for general social, economic and administrative reform.<sup>23</sup>

#### IV. Concluding remarks

Concluding, it may be stated that the presented discourse on European integration, from the point of view of European non-European Community countries, in relation to their respective administrative legislation reforms and administrative system compatibility, should have in mind not only the general features and tendencies related to the European Community and law (as presented in section II), but also the specific features of particular European administrative systems (as presented in section III).

Particular analytical emphasis should be put on social and administrative systems in various states of "crisis", as

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<sup>23</sup> Gorazd Trpin: "The Question of Efficiency in Modern Administrative Systems" (in Serbo-Croatian), Savezni sekretarijat za pravosudje i upravu i Savezni zavod za unapredjenje uprave, Beograd, Br. 33, 1989, pgs. 37-48.

administrative legislative reform in these countries can show tendencies that feature various levels of incompatibility in regard to general European integrative processes, as well as incompatibility in regard to the European Community legal order and administrative institutions in particular.

As illustrations supporting the fact that these tendencies in a particular European non-European Community country<sup>24</sup> have been recognized not only by expert administrative bodies, but by political factors as well, we present an opinion of the federal Expert Board for Public Administration, on one side, and the (political) initiative by the "UJDI" Association for Yugoslav Democratic Initiatives, on the other.

a. In the "Opinions, Proposals and Initiatives" of the federal Expert Board for Public Administration given on the occasion of the Report of the Federal Government on the subject of realization of the policy of public administration and its transformation, inter alia, the following statement was emphasized:

"In the opinion of the Expert Board, there must be a clear option for such a model of the public administration that would correspond to the real needs of the present moment, as the further preservation of inflexible hierarchical relations, as well as the cultivation of the bureaucratic mentality of the functionaries and civil servants employed, would undermine the actions of the economic system reforms and the organization of scientific and technological developments, compared to the level of development in the world surrounding us. This "economic" orientation, as well as the rationalization of administrative activity of the administration, aimed at the support of the activity of the economic subjects, must receive convincing and unquestionable priority in the forthcoming administrative transformation. (...)

The general re-orientation should be co-ordinated together with the constitutional changes, the changes of the Law on the System of Government Administration, as well as the changes of the other laws and

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<sup>24</sup> Josip Kregar, Ivan Šimonović (Editors): "Yugoslavia-Institutional Framework" (in English), Narodne novine, Zagreb, 1989; Eugen Pusić: "Public Administration and Self-Management in Yugoslavia", International Review of Administrative Sciences, Vol. 55, No. 1, 1989, pgs. 25-28.

regulations that regulate the activities of the administration."<sup>25</sup>

b. The other illustration deals with a recent (political) proposal for resolving the various aspects of crisis in Yugoslavia on the basis and principles that are applied within the framework of the European Community. The proposal, formulated as "The Constitutional Charter of Yugoslavia"<sup>26</sup>, states that Yugoslavia should be conceived on the basis of the European Community model of integration. The Charter is very short, has five sections, and an annex with explanations of solutions in the Charter.

Section I of the Charter proclaims that the strategic aim of all present federal units of Yugoslavia is to become full members of the European Community. Section II states that all Yugoslav republics-states between themselves will recognize the same freedoms and rights that citizens and economic subjects of one European Community country have in other European Community countries. Section III and Section IV provide that all Yugoslav member-states vest authority to the Yugoslav Community, as the member-states of the European Community have vested to the Community. Section IV proclaims that the existing boundaries are inviolable, but that they should be surpassed by the free flow of people, information and goods.

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<sup>25</sup> Expert Board for Public Administration: "Opinions, Proposals and Initiatives of Given on the Occasion of the Report of the Federal Government on the Subject of Realization of the Policy of Public Administration and its Transformation", (in Serbo-Croatian), Informacije, Br. 30, Zavod za unapredjenje savezne uprave, Beograd, Decembar 1987, pgs. 24-32.

<sup>26</sup> The Constitutional Charter of Yugoslavia, was recently (July 1990) presented for public debate by the Association for The Yugoslav Democratic Initiative ("UJDI").

Some selected excerpts from the explanation of the Charter are also very illustrative of the need to set foundations and basis for the preparation and adoption of the economic, political (and administrative legislative) system of this country, in context of the European integration processes.

"In regard to the European integration, it is obvious that no European country can have a better perspective for active influence in the integration, and by this on the processes in its own society, than by creating the conditions to become a full member of the European Community. Therefore, as her strategic aim, Yugoslavia should determine to become a full member of the European Community.

Yugoslavia must take the same road as Greece, Spain and Portugal did, when illegitimate regimes in these countries were substituted by democratic ones.

In the course of the last year, Yugoslavia has, due to the (anti-inflation and economic) policy implemented by the Prime Minister Ante Marković, come a significant portion of the way. Nevertheless, Yugoslavia is still in many ways a closed society with many barriers in the flow of goods, capital, people and information".

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