

# ADMINISTRATIVE LAW AND JUSTICE IN EUROPE: TWO SYMPOSIA

## THE IMPORTANCE OF COMPARATIVE LAW IN ADMINISTRATIVE JUSTICE

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The question of whether the old continent is witnessing the emergence of a common legal culture is the subject of heated debate among legal scholars. Attempts to answer this question vary in terms of both solutions and content. But certainly this debate has accentuated still further the importance of a comparative approach to legal studies and, in particular, the field of administrative law.

It is common knowledge that this branch of law is a late developer in terms of elements of comparison, even if it has rightly been pointed out that it was in fact the twentieth-century "rediscovery" of the comparison of administrative law that was the latecomer, because the pioneering studies of Goodnow in the late nineteenth century show the degree of interest in comparison that there was in this field at that time.

As Mario P. Chiti noted in the first encyclopaedia entry dedicated to comparative administrative law, the field of administrative justice has always been an exception to the domestic perspective from which the subject had always been approached, in the sense that the comparative approach has always been constant and considered useful.

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There are probably two main reasons: the central role long held by questions relating to judicial protection, which, in some countries, have often taken on an all-pervading importance, and the oscillation within certain jurisdictions (including ours) between dualism and monism, often resulting in incomplete models, with the need, therefore, to look around to see what others are doing.

In recent decades, another factor has also been added, that of European integration and a drive towards convergence also in the field of administrative justice, through the dissemination of certain principles and institutions. The first of these is the effectiveness of judicial protection, which represents the strongest driving force in the sector for the integration of continental administrative justice systems as regards the fullness of protection and the range of actions as well as reduced times for the delivery of justice.

This phenomenon has certainly led to a rapprochement between administrative justice systems in terms of their ability to enter into dialogue and exchange principles and institutions (even to the point of speaking of the possibility of a European Code of Administrative Procedure), but it has also shown that, beyond the *nomen*, the substance of principles and institutions in application is often very different, since the context and the reference environment involve a process of harmonisation on the part of the "guest" principle or institute.

For all of these reasons, it remains useful to go on with the exchange between jurisdictions and between experiences in the field of administrative justice. A reading of the contributions in this issue confirms that, on the one hand, the distance between legal systems traditionally considered diametrically opposed is not so astronomical, and, secondly, that, beyond any superficial analysis, there are still numerous and significant differences in application, also in continental Europe. So far and, at the same time, so near (and vice versa).

The persistent differences between legal systems, however, do not mean that there is no point in identifying a common substrate with the aim of building an area for a shared European legal culture. They simply indicate a path towards rapprochement, still today built upon the European guiding principle of unity in diversity and showing how long the road ahead actually is.

In this sense, comparison in the field of administrative justice is of particular value, since it is a sector that necessarily has to privilege solutions that can prove effective and efficient when it comes to concrete application. It is, therefore, a convergence that cannot be regulated from above, but must be built in the field. It is technical process that takes precedence over political choices and it is the judicial function which, in the long run, imposes its nature, its history, and its tradition on the political choices of governments.