

GLOBAL LAW AND GOVERNANCE SUMMER SCHOOL, EPLO, SOUNIO, JULY 2013

Course: **The Impact of Economics on Administrative Law**

Professor: **Athanasios Gromitsaris**

Timetable: Tuesday, 23 July, 2013

09:30 – 11:30

11:30 – 13:30

Thursday, 25 July, 2013

14:30 - 16:30

16:30 – 18:30

Hours: 8

Course code: C1/2

Content

Based on the analysis of the characteristic qualities of administrative law systems in the EU, the course will first discuss the impact of economics on legal regulatory modes and legal reasoning (*Part I*). The course will then go on to examine the role of European administrative legal systems within the context of the Eurocrisis and the new economic governance in the European Union (*Part II*). The syllabus includes the following topics:

Introduction. The New Public Management (NPM) strategy of reshaping the public sector to conform to ideas of private sector organizational efficiency and effectiveness brings an economic view of public administration to the fore of the analysis. The main features include an emphasis on output through accountability mechanisms, decentralization, cost-cutting and cost-consciousness, market testing, competitive tendering of central government functions, importance of public private partnerships and external consulting organizations, proliferation of external agencies to whom government functions are contracted, and private sector provision of public services. Such NPM-type reforms and economic principles are part of the structural adjustment programs (Memoranda of Understanding) in the crisis countries of the Eurozone.

Part I: Transforming the “Genetic Code” of Administrative Law.

Students will get familiar with major fields of tension between economic rationality and the core features of administrative legal systems, such as administrative law’s autonomy, interruptions in the chains of administrative legitimacy, substantive and procedural legality, privatization, contractualism and the role of judicial review. The main questions to

be debated will be: Which are the limits and features of the public sector according to EU and IMF? What kind of “new administrative law” does the EU and the competition among states as system providers require?

Part II: The Correlation of Law, State and Money in the Eurozone.

1. From the “Weberian” Bureaucracy Model to “Neo- and Post-Weberian” Conceptualizations of Economic Governance in the European Union

National administrative law traditions react in different ways to economic thought. However, the result of economic influence on administrative structures up today has not been a complete transformation of the public sector, but, rather, a sort of a mix of the traditional institutions and the ideas of liberalism and managerialism. Some people call this the “re-emergence” of Weberian public administration, or the emergence of “Neo-Weberianism”. There will be two core subjects for debate: On the one hand the claim that to understand administrative legal systems in the modern world, one cannot ignore that they depend on non-state-institutions; and, on the other hand, the claim that to understand money in the modern world, one cannot ignore that it is also a “creature of the law and the state” (Neo-Chartalism), and not a purely market phenomenon. Against this backdrop the course will turn to those aspects of the new EU economic governance that are of major importance from the viewpoint of administrative law.

2. The Public Sector According to the International Public Sector Accounting Standards (IPSAS).

A globalization process of a specific public sector concept is on the way: It is reflected in the accounting standards issued by the International Public Sector Accounting Standards Board. They have been adopted or are in the process of being adopted by a large number of countries and intergovernmental organizations. Even when they are not adopted, they are of great influence on the methods and standards remaining in use. The question is then, how this “globalized” public sector concept relates to the public law traditions in Europe. The course will investigate the role of the public sector as a regulatory authority and oppose it to cases when the State acts in an entrepreneurial capacity (as a public enterprise) or as a shareholder and stakeholder in private entities. The course will bring the various meanings of the concept of governmental “control” to the fore. The nature of the public sector’s (grantor’s) control over property associated with a public private partnership (a type of control over assets) will have to be distinguished from a government’s regulatory role when an industry provides services that formerly had been provided by the government as well as from the type of control that is necessary for deciding the corporate governance and consolidation issue.

Reading

Part I: Transforming the “Genetic Code” of Administrative Law

E. Schmidt-Aßmann, The Internationalization of Administrative Relations as a Challenge for Administrative Law Scholarship, German Law Journal Vol. 09 No.11, 2008, 2061:
http://www.germanlawjournal.com/pdfs/Vol09No11/PDF_Vol_09_No_11_2061-2080_Articles_Assmann.pdf

T. Schmitz, Book Review: Matthias Ruffert (ed.). The Transformation of Administrative Law in Europe/La mutation du droit administratif en Europe, Munich: Sellier: European Law Publishers 2007, Pp. 326: <http://www.ejil.org/pdfs/19/3/1633.pdf>

F. Bignami, Comparative Administrative Law, in The Cambridge Companion to Comparative Law 145-170. (Mauro Bussani and Ugo Mattei eds., 2012)
http://scholarship.law.gwu.edu/faculty_publications/157

M. Bombardelli, Independent Administrative Agencies: http://www.ius-publicum.com/repository/uploads/30_05_2013_13_15_Bombardelli_EN.pdf

F. Reimer, Public Law and Economy: http://www.ius-publicum.com/repository/uploads/21_05_2013_17_11_Reimer.pdf

W. F. Fox, Jr, Understanding Administrative Law, 4th ed. 2000 Matthew Bender & Company Inc, Chapter 1, Introduction:
<http://www.lexisnexis.com/lawschool/study/understanding/pdf/adminch1.pdf>

A. Benish and D. Levi-Faur, New Forms of Administrative Law in the Age of Third Party Government, Working Paper No. 34, May 2011, Jerusalem Papers in Regulation & Governance: <http://regulation.huji.ac.il/papers/jp34.pdf>

T. Prosser, Public Utilities: http://www.ius-publicum.com/repository/uploads/17_06_2011_19_45_Prosser.pdf

C. Gröpl, M. Rupp, State Assets (Public Ownership) in the Federal Republic of Germany, http://www.ius-publicum.com/repository/uploads/10_03_2011_16_33_Groepl.pdf

I. Lienert, Where Does the Public Sector End and the Private Sector Begin? IMF Working Paper, June 2009: <http://www.imf.org/external/pubs/ft/wp/2009/wp09122.pdf>

C. von Soest, What Neopatrimonialism Is – Six Questions to the Concept, 23 August 2010, GIGA German Institute of Global and Area Studies, Hamburg: http://www.giga-hamburg.de/content/fsp1/pdf/neopat/paper_neopat_workshop_soest.pdf

OECD, Phase 3. Report on implementing the OECD Anti-Bribery Convention in Greece, June 2012: <http://www.oecd.org/daf/anti-bribery/Greecephase3reportEN.pdf>

C. Hood, Public Management, New, Encyclopedia Entry, 2001:
http://www.christopherhood.net/pdfs/npm_encyclopedia_entry.pdf

C. Pollit and S. Dan, The Impact of New Public Management in Europe: A Meta-Analysis, Coordinating for Cohesion in the Public Sector of the Future, 14 December 2011:
http://www.cocops.eu/wp-content/uploads/2012/03/WP1_Deliverable1_Meta-analysis_Final.pdf

A. Gromitsaris, Liability and Accountability: http://www.ius-publicum.com/repository/uploads/25_08_2011_11_08_Gromitsaris.pdf

Part II: The Correlation of Law, State and Money in the Eurozone

F. Erixon, A crisis of the sovereign: The limits of eurozone governance 07/12/2011:
http://www.europesworld.org/NewEnglish/Home_old/PartnerPosts/tabid/671/PostID/2829/language/en-US/Default.aspx

Parliament's main dossiers, Economic governance at Eurozone level:
<http://europarliament.touteleurope.eu/understanding/parliament-s-main-dossiers/economic-governance-at-eurozone-level.html>

D. A. Sotiropoulos, A Democracy under Stress Greece since 2010, Taiwan Journal of Democracy, Volume 8, No. 1: 27-49, July 2012/27:
<http://www.tfd.org.tw/docs/dj0801/002.pdf>

F. Maclachlan, Max Weber and the State Theory of Money, 2003, paper presented at the 44th annual meeting of the International Studies Association, Portland, Oregon, 1. March 2003: <http://home.manhattan.edu/%7Efiona.maclachlan//maclachlan26july03.htm>

[ESA95 Manual on Government Deficit and Debt - Long term contracts between government units and non-government partners \(Part IV\)](#)

P. Krugman, Deficits and the Printing Press (Somewhat Wonkish), New York Times, March 25, 2011: <http://krugman.blogs.nytimes.com/2011/03/25/deficits-and-the-printing-press-somewhat-wonkish/>

European PPP Expertise Centre, State Guarantees in PPPs. A Guide to Better Evaluation, Design, Implementation and Management, May 2011:
<http://www.eib.org/epcc/resources/epcc-state-guarantees-in-ppps-public.pdf>

International Public Sector Accounting Standards Board (IPSAS-BOARD), Conceptual Framework for General Purpose Financial Reporting by Public Sector Entities: Presentation in General Purpose, April 2013:

<https://www.ifac.org/sites/default/files/publications/files/IPSASB-Conceptual-Framework-Exposure-Draft-4-Presentation-April-2013.pdf>

International Public Sector Accounting Standards Board, Conceptual Framework for General Purpose Financial Reporting by Public Sector Entities: Elements and Recognition in Financial Statements, November 2012:

<https://www.ifac.org/sites/default/files/publications/files/Conceptual%20Framework%20Exposure%20Draft%202%20FINAL%20November%208,%202012.pdf>

International Public Sector Accounting Standards Board, Conceptual Framework for General Purpose Financial Reporting by Public Sector Entities: Measurement of Assets and Liabilities in Financial Statements, November 2012:

https://www.ifac.org/sites/default/files/publications/files/Conceptual%20Framework%20Exposure%20Draft%203%20FINAL%20November%208,%202012_0.pdf

IFRIC 12 'Service Concession Arrangements' — A pocket practical guide:

http://www.corpgov.deloitte.com/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/CanEng/Documents/Financial%20Reporting/IFRS/IFRIC-12_ServiceConcessionArrangements_PockePracticalGuide.pdf

IPSAS 32—SERVICE CONCESSION ARRANGEMENTS: GRANTOR

http://www.ifac.org/sites/default/files/publications/files/B8_IPSAS_32.pdf