

SUMMARY OF THE THESIS

EUROPEANIZATION OF NATIONAL ADMINISTRATIVE LAW:
THE PRINCIPLE OF TIMELINESS AND THE AWARD OF DAMAGES.
LEGAL REVIEW STANDARDS STEMMING FROM THE EU LAW,
COUNCIL OF EUROPE LAW AND ROMANIAN LAW

Keywords: principle of good governance, timeliness, award of damages, European model reasoning.

This main purpose of the thesis is to analyse the influence of the European Law and the Council of Europe's law on two selected aspects of Romanian administrative law. It presents the case study of (1) the principle of timeliness and that of (2) the award of damages, at the confluence of two great sources of influence, that of EU law on the one hand and that provided by the ECHR on the other hand.

Essentially, it tries to determine whether there is an European model standard (developed by the CJEU and the ECtHR, respectively) in relation to the principle of timeliness and regarding the award of damages. Then, it looks into the Romanian national practice to see whether it reflects this model of reasoning and, if and when it does not, if it tries to identify the reason and propose a remedy. Broadly speaking, the aim of the thesis is to assess the effects of EU and CoE law on the national Romanian administrative law.

The confluence of these two sources of influence on national administrative law generated a practical need of "consistent standards" of protection of individual rights concerning the administration (including the right to good governance and all its sub-components). For this reason, the thesis will argue for a pluralistic approach in terms of layers of protection, which implies reliance on both the CJEU and the ECHR developments, thus trying to promote a higher level of protection and a deeper commitment to modern fundamental rights in relation to the administration.

The main purpose of the thesis is to look into EU and CoE law and case-law in order to determine a consistent algorithm that national courts may use when dealing with aspects concerning the principle of timeliness and the award of damages. From a general perspective, it tries to assess the level of Europeanization of Romanian national law and practice. In particular, the thesis assesses the principle of timeliness

and the award of damages, as two sub-principles standing under the umbrella of the “good governance” standard. Further, it presents how the CJEU and the ECtHR approached the same concept, in the light of each one’s legislative framework and competences. Such a research aims to identify a well-defined standard of protection and deduce out of the respective case-law (if possible) a generally applicable algorithm. Then, it assesses this algorithm against the standards of protection developed into the Romanian national law and practice, in order to determine the level of Europeanization of national Romanian law.

Further, observing how the CJEU and the ECtHR have dealt with the same concept has the potential to create the premises for a shared standard of protection, which can, from a point on, become a benchmark for all member states even in purely internal matters, which would raise the level of Europeanization to a whole new level. By identifying this universal and autonomous standard, member states’ tradition in matters related to administrative law is both lost and found: it is lost, in the sense that tradition might lose specificity and its deep constitutional roots. However, in my opinion, it is found, because all autonomous notions developed by the European Courts are ‘constitutional traditions common to the Member States’ – in this view, Europeanization represents an insightful perspective into the fundamentals of each national legal system.

A parallel analysis of the same principle, regarded from the CJEU, the ECtHR and the national perspective has the potential to ensure a uniform application of standards between the *acquis* and the relevant Council of Europe imposed requirements. In other words, the concept of this thesis is based on the idea that the *acquis* must be consistent with fundamentally important documents in the constitutional architecture of each member state such as the ECHR. To this end, Article 6 TEU requires the EU to accede to the ECHR.

Such consistency brings more predictability for lawmakers and law enforcers in member states and, by creating a common standard of protection, it becomes accessible and familiar to all recipients. In the long term, such a standard has the potential to reach universality: all national administrative action is bound to respect the standard, *the same standard*, no matter the purely internal nature of the aspect or its submission to EU law.

By assessing the “level of Europeanization” of the national Romanian administrative law and practice in areas regarding the timeliness and the award of

damages, the study also identifies what barriers practitioners and individuals encounter in terms of full efficiency of the EU and ECHR law and the rights deriving from it.

Last but not least, the study intends to provide a useful tool for practitioners – a concise guide to the evolution of the European and Pan-European case-law in the matters under observance. I tried to analyze in a parallel view the way the CJEU, the ECtHR and the national Romanian courts have dealt with the same concepts (timeliness and damages). Further, while studying many cases dealing with the same problems, I tried to deduce an algorithm, with well-established steps, so that the practitioners could determine the way they should reason when faced with cases where the studied principles are relevant. However, while being focused to determine the general concept, I tried not to lose out of sight the details that could change the whole scenario.

From a structural point of view, the thesis is divided into three main sections: the first section is rather theoretical and it is meant to set the scene for the Europeanization process – it mainly tackles aspects concerning the relationship between EU and CoE law, between EU and national law and between CoE and national law. The second section is the main focus of the thesis and it analyses the principle of timeliness and the award of damages. It looks into the CJEU's, the ECtHR's and Romanian courts' case-law to determine whether there is a model reasoning that can be deducted out of EU and CoE law, applicable for national courts. Then, it assesses the standards developed by the CJEU and the ECtHR against the Romanian practice, in order to deduce the level of Europeanization in the fields under research. The last section of the thesis draws both the particular and the general conclusions of the research.

Table of Contents

Chapter I	9
INTRODUCTION	9
1.1. Scope of the thesis	9
1.2. Outline of the thesis and relevance of the sections	14
1.3. Methodological Choices and relevance.....	25
1.3.1. Structure	25
1.3.2. Selection of principles.....	30
1.3.3. Selection of case-law	33
1.3.4. The search for a model-standard stemming from EU and CoE law in relation to the principle of timeliness and the award of damages.	35
1.3.5. National Courts and Europeanization	40
Chapter II	45
Europeanization of national law at the crossroad of EU and COE law.....	45
2.1. Introduction.....	45
2.2. Clashes between identities – the EU law and the national legislation. Diversity versus coherence.....	49
2.3. National administrative law under the influence of European and CoE Principles.....	55
2.4. EU and CoE development of rights and standards under the umbrella of the notion of “good administration”	56
2.5. Legal fundamentals for the Europeanization of national law	62
2.5.1. Europeanization stemming from EU law	63
2.5.2. Europeanization stemming from the CoE – applicability of the ECHR in administrative law	65
2.6. Institutional forces fostering Europeanization	73
2.6.1. The European Parliament.....	73
2.6.2. The Council of Europe and its European Court of Human Rights	74
Chapter III.....	81
Europeanization through EU law. Tools at the disposal of national courts	81
3.1. Introduction.....	81
3.2. Primacy of EU law.....	82
3.3. Direct applicability	85
3.4. Direct effect.....	86
3.4.1. Vertical and horizontal direct effect	87
3.4.2. Direct effect of Treaty provisions.....	88
3.4.3. Direct effect of Regulations	88
3.4.4. Direct effect of directives.....	90
3.4.5. Strategies to counterbalance the “no horizontal direct effect” theory.....	95
3.5. Consistent interpretation	98
3.6. State liability	100
3.7. Principles regarding remedies for breach of EU law	103
3.7.1. Lack of EU competence and Member States’ procedural autonomy	104
3.7.2. Genesis and Evolution of the Europeanization of national procedural law	107
3.7.3. Incidental proceduralization.....	108
3.8. The application of EU law by national courts – from procedural autonomy, to equivalence, effectiveness and effective judicial protection.....	109

3.9. The principles of equivalence, effectiveness and effective judicial protection and their concrete manifestation	111
3.9.1. The principle of equivalence.....	112
3.9.2. The principle of effectiveness.....	113
3.9.3. Principle of effective judicial protection	115
3.10. Procedural autonomy, quo vadis?	116
3.11. Concluding remarks	122
Chapter IV	125
The Romanian legal system and the accession to CoE and EU.....	125
4.1. Romania’s legal system.....	126
4.2. Romania’s accession to the EU	127
4.3. Romanian administrative law under the influence of CoE law.....	128
4.3.1. Conventions impacting Romanian administrative law	130
4.3.2. The European Social Charter	134
4.3.3. Access to official documents: pending ratification, state of the art legislation	135
4.4. Reception of CoE General Principles of Good Administration through the Application of the ECHR by Romanian Courts and Administration	139
4.4.1. The Legal force of the ECHR.....	142
4.4.2. Direct Application of CoE General Principles of Good Administration ‘faute de mieux’	145
4.4.3. Reception of CoE General Principles of Good Administration by promulgation of “Codes of good administrative behavior” by the Administration or Independent Accountability Institutions	155
4.5. Instances of Europeanization of Romanian administrative law: Re-opening Court proceedings in administrative law for reasons of non-compliance with EU law.....	158
Chapter V.....	169
The principle of timeliness of the administrative procedure	169
5.1. General aspects.....	169
5.2. Legal fundamentals for the principle of timeliness.....	171
5.3. Standards developed in the EU case-law.....	174
5.4. Standards developed in CoE law by the ECHR in relation to timeliness ..	183
5.4.1. The relevant timeline.....	185
5.4.2. Reasonableness of the lengths of proceedings.....	193
5.5. Standards developed under Romanian law.....	202
5.5.1. Romanian legal fundamentals of the principle of timeliness.....	202
5.5.2. The Romanian case-law	204
5.5.3. Standard of review of Romanian national courts assessed against the standards developed by the EU and CoE law	212
5.5.4. Procedural deadlines provided by the Code of Civil Procedure.....	217
5.5.5. Procedural mechanisms of administering evidence - the administration of evidence by lawyers	218
5.5.6. Administrative silence	219
5.5.7. Initiatives on alternative dispute resolution or judicial proceedings	223
5.5.7.1. Mediation	224
5.5.7.2. The administrative appeal.....	230
5.6. Conclusions on the principle of timeliness.....	234
5.6.1. Conclusions on the principle of timeliness as developed by the CJEU...234	

5.6.2. Conclusions on the principle of timelines, as developed by the ECtHR.	235
5.6.3. Do the standards imposed by the CJEU and ECtHR collide in such a manner as to deduce a model-standard applicable by national courts?	239
5.6.4. Do Romanian courts apply the modern standard developed under EU and CoE law?.....	241
Chapter VI	244
The award of damages – a principle, a right and a remedy	244
6.1. General aspects.....	244
6.2. Standards developed at the European level.....	250
6.2.1. Damages in relation to EU institutions for breach of EU law	250
6.2.1.1. Legal framework	250
6.2.1.2. Procedural framework	250
6.2.1.3. Nature of the action for damages	253
6.2.1.4. Conditions for non-contractual liability	256
6.2.1.5. Unlawfulness of an act or conduct stemming from EU institutions.	257
6.2.1.6. Proof of existence of damage	267
6.2.1.7. Types of damage	277
6.2.1.8. Existence of a causal link between illegality and damage	282
6.2.2. Damages in relation to Member States and their administrative authorities for breach of EU law	294
6.2.3. State liability and damages in public procurement law.....	302
6.3. Standards developed under CoE law	311
6.3.1. Legal framework	311
6.3.2. ECtHR case-law on damages.....	311
6.3.2.1. Formal requirements for submitting a claim for just satisfaction	313
6.3.2.2. Substantive requirements for submitting a claim for just satisfaction	314
6.3.3. Violation of a human right covered by the Convention	315
6.3.4. Existence of damage and types of damages	315
6.3.5. Causality	318
6.3.6. Partial reparation before national courts.....	319
6.3.7. Just and necessary	319
6.3.8. Costs and expenses	325
6.4. The Romanian perspective on the right to damages	327
6.4.1. Romanian legal fundamentals.....	327
6.4.2. The Romanian case-law	329
6.5. Conclusions regarding the award of damages.....	351
6.5.1. Conclusions on the principle of damages, as developed by the CJEU	352
6.5.1. Damages in relation to the EU institutions	352
6.5.2. Damages in relation to Member States and their administrative authorities for breach of EU law	361
6.5.2. Conclusions on the principle of damages, as developed by the ECtHR .	364
6.5.3. Do the standards imposed by the CJEU and ECtHR collide in such a manner as to deduce a model-standard applicable by national courts?	369
6.5.4. Do Romanian courts apply the model standard developed under EU and CoE law?.....	371
Chapter VII.....	375
Conclusions	375
7.1. Thoughts	375

7.2. The questionnaire	376
7.3. Afterthoughts	390
BIBLIOGRAPHY.....	395
Legal literature.....	395
Books	395
Reviews, Articles	408
Documents, Reports, Working Papers	419
Case-law.....	423
CJEU.....	423
ECtHR	441
Romania.....	461

