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An Overview of Certain Tendencies in Extending the Concept of Administrative Litigation in the European Union and International Law

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Abstract: The article explores the dynamics of administrative litigation in the European Union, with a focus on the role of the Court of Justice of the European Union in settling disputes. It analyzes the limits of the discretionary power of the EU institutions and how the Court of Justice provides a judicial review of their decisions. It also discusses the potential for extending the concept of administrative litigation in international law and the existing mechanisms for settling disputes between states and international organizations. The subtle landscape of administrative disputes in international law is recalled, highlighting their importance in the context of various global disciplines often narrowly contextualized at the regional level. It outlines the aspects of this field, which encompasses the means by which disputes between individuals or entities (such as international organizations) and administrative authorities at the international level are resolved. Central themes include the protection of human rights and the promotion of good governance, highlighting the potential benefits of establishing a hierarchy of norms in the face of associated challenges. Remarkably, although the concept of administrative litigation differs in public international law from domestic law, recent developments suggest a possible extension of the concept, leading to some legal and administrative mutations. The solutions are the permeability of the systems and their adaptation and adequacy to the foreseen changes.

Keywords: administrative litigation, European Union, Court of Justice of the European Union, discretion, public international law.

Introduction

Developments in administrative litigation in the European Union (EU) and international law indicate a trend towards greater involvement and regulation of relations between states and other international entities with the aim of ensuring the protection of fundamental rights and good administration. The concept of administrative litigation is increasingly developing, a development that is grounded in the case law of the European Court of Human Rights and other international courts, which influences administrative policies and practices at the global level. The analysis of the hierarchy of norms is important for the coherence and efficiency of the international legal system, which determines how international regulations, decisions, and treaties are interpreted and applied in different legal contexts. In the context of cross-border interactions and globalization, administrative litigation is geared towards the need for hybrid rules that can resolve disputes that transcend national borders and individual jurisdictions.
European Union law focused on the development of the internal market has given rise to

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lively disputes at the national level, where the question of delimiting the boundaries between the logic of the common market and the internal public regime of each state, or in other words, the delimitation of the border between the interests of the Union and national interests, has often been raised (Avram, 2003). The so-called conflict between the private logic of the single market and the public logic that was part of the national sovereignty of each state has been resolved most often by case law (Alexandru, Gorjan, Ivanoff, Manda, Nicu, Săraru et al., 2005).

Administrative litigation is the set of legal means by which citizens are protected against administrative acts issued by public authorities. In the European Union, this area is of particular importance because of the diversity of the Member States' legal systems and the need to protect citizens' rights before the public administration. The European Union does not have a unitary system of administrative litigation, but there are common principles and regulations that influence this area in the Member States. The Equal Treatment Directive 2000/43/EC, the Charter of Fundamental Rights of the European Union and the case law of the Court of Justice of the European Union (CJEU) are key instruments in this respect (Mendes, 2009).

Directive 2000/43/EC obliges Member States to provide an effective system of administrative litigation to protect citizens' rights against discrimination in various areas, including administrative acts (Bell, 2008). The Charter of Fundamental Rights of the European Union provides in Article 41 for the right to good administration, which includes the right to be heard before an individual measure is taken which may affect him or her, the right of access to his or her file and the obligation of the administration to give reasons for its decisions (Schwarze, 2006). We cannot talk about the protection of citizens' fundamental rights without guaranteeing a transparent and accountable public administration, which translates for citizens into the means to challenge administrative decisions that affect their rights and interests (De Búrca, 2011).

Although significant progress has been made, administrative litigation in the European Union faces multiple challenges. The diversity of national legal systems and differences in the application of European rules can create inequalities in access to justice and in the protection of citizens' rights (Koch, 2014). Another problematic aspect is the complexity of administrative and judicial procedures, which can discourage citizens from exercising their rights. Added to this, there are concerns about the independence and impartiality of administrative courts in some Member States (Harlow & Rawlings, 2014). Strengthening these mechanisms and harmonizing procedures at European level can help to improve the protection of fundamental rights in the European Union.

The mission of the Court of Justice of the European Union since its creation in 1952 has been to ensure 'respect for the law in the interpretation and application' of the Treaties. The Court of Justice of the European Union is currently composed of two courts: the Court of Justice and the General Court (created in 1988). The Civil Service Tribunal, created in 2004, ceased its activity on 1 September 2016, after transferring its powers to the General Court in the context of the reform of the Union's jurisdictional architecture. The European Court of Justice plays an important role in the settlement of administrative disputes in the European Union. It acts as a veritable administrative tribunal, examining complaints by natural and legal persons against acts of the European Union and appeals lodged by agents of the European institutions against them (Ținca, 2002). The remedies for challenging acts of the European Union before the General Court and the Court of Justice are actions for failure to act, actions for annulment, actions on a point of interpretation, and actions in full jurisdiction.

Literature Review

As will be detailed in the discussion chapter, we emphasize the role and functions of the Court of Justice of the European Union within the legal system of the European Union, with a focus on the ways in which it intervenes in the settlement of disputes concerning the delimitation of competences between national and European law. It highlights the importance of the Court in ensuring respect for the law and the interpretation of the treaties, in a context where conflicts between the logic of the European common market and national sovereignty are often resolved through case law. The focus is on the possibilities for the evolution of integrated administrative litigation in the dynamics and mutations of international law. Administrative litigation in international law is an essential dimension of the protection of individual rights and good governance at the global level. Over time, the field has evolved significantly, reflecting both changes in international relations and the diversification and complexity of global administration. Carlston (1959) explored the concept of international administrative law as a distinct branch governing interactions between states and international organizations. His work emphasized the importance of clear rules and transparent procedures for managing disputes and litigation within the international community.

In a similar vein, Elias (2012) analyzed the development and effective application of international administrative law in the context of modern international organizations. His work emphasized the need for robust legal mechanisms to ensure accountability and transparency in the administration of international affairs. Quayle (2020) extended this discussion by exploring the essential role of international administrative law in multilateral governance structures, highlighting recent developments and the challenges associated with implementing international rules in diverse and often complex contexts. On the other hand, Hepburn's (2012) contributions have clarified the legal implications of the obligation to give reasons for administrative decisions in international jurisprudence. These analyses are essential in understanding how international law addresses issues of administration and accountability in relation to individual and collective rights.

In conclusion, the current literature reflects a growing concern for the strengthening and effectiveness of administrative litigation in international law. Recent studies emphasize the importance of adapting international rules and procedures to the contextual changes and new challenges of the 21st century. This area continues to be central to ensuring respect for fundamental rights and promoting transparent and accountable public administration worldwide.

Methodology

We utilized an integrative approach that combined doctrinal analysis with a comparative case study in the field of administrative litigation in international law. First, we conducted a detailed and systematic literature review to understand the developments and implications of this field within the European Union and international law. We analyzed various primary sources, including international treaties, international customs, judicial decisions, and other relevant documents to draw a comprehensive picture of the legal and practical context. The comparative case study was instrumental in highlighting the differences and similarities between the ways in which administrative disputes are settled internationally and within the European Union.

We examined the case law of the Court of Justice of the European Union and other international courts to illustrate how different jurisprudence influences and shapes administrative and jurisdictional practices. In organizing and structuring the information, we used a thematic analytical method, which allowed us to identify and synthesize general

principles and relevant jurisprudential trends. This facilitated an in-depth assessment of the impact of administrative litigation in protecting fundamental rights and promoting good governance in international organizations and the European Union. Finally, we have integrated the research results into a coherent theoretical analysis, highlighting the importance and problems associated with the extension of the concept of administrative litigation in the context of globalization and European integration.

Results and discussion

Appeals before the Court of Justice of the European Union

Action for failure to act

An action for failure to act is a procedural means available to States, the institutions of the European Union, undertakings and individuals to challenge before the Court of Justice, in certain strictly defined situations, the failure (omission) of the European Parliament, the European Council, the Council, the Commission, the European Central Bank and the other bodies, offices and agencies of the European Union to take decisions in matters in which those institutions are required by the Treaties to take a certain measure. Before a case is brought before the Court of Justice, a *prior administrative appeal* must be lodged with the Court, which consists in inviting the institution concerned to act. The invitation must be clear and precise and must warn the institution concerned that persistent inaction will result in the institution's failure to act giving rise to an action for failure to act. If, at the expiry of two months from the date of the letter of formal notice, the institution has not taken a position, the party concerned has a further two-month period within which to bring an action for failure to act before the Court of Justice (Article 265 TFEU, ex Article 232 TEC). If the institution adopts a position within the legally prescribed time limit, a judicial review before the Court of Justice is no longer possible and only an action for annulment may be brought, if necessary. Likewise, if the institution's position is communicated during the proceedings but before judgment has been given, the case will be deemed to be devoid of purpose.

The Court has held that any act or action of the institution in question, even if not of a formal and binding nature, must be considered as taking a position that no longer justifies a judicial remedy for failure to act. Thus, if the institution acts in a manner other than that indicated by the parties in the summons to action, this conduct amounts to a statement of position (Manolache, 1999; Dragoș, 2000).

It is difficult to determine when the institution has failed to act, and thus from when the administrative appeal may be lodged, because European Union law does not lay down any time limit within which its institutions are called upon to act. The Court has held that administrative appeals must be lodged within a 'reasonable time'. In most ECJ judgments, the reasonable time is included between 2 months and 2 years from the date of the actual existence of the obligation to act. In Case 4/1970, Netherlands v. European Commission referred to the ECJ, the Advocate General invoked the principle of legal certainty against the Court's arbitrary determination of the limits of the concept of 'reasonable time', arguing that 'the idea of establishing by case law a time limit the expiry of which would deprive those concerned of the right to bring an action before the Community administration is contrary to the principle of legal certainty and is contradicted by the argument that neither the method of analogy nor that of comparative law makes it possible to determine with certainty a time limit which can be regarded as 'reasonable'.

Appeal for annulment

An action for annulment is a procedural means enabling states, institutions of the European Union and natural and legal persons to challenge before the Court of Justice acts adopted by the European Council, the Council, the Commission, the European Central Bank, the European Parliament and other bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties and, under certain conditions, to have them annulled (Article 263 TFEU, ex Article 230 TEC). Annulment proceedings can be based only on the legality, not on the appropriateness of the act (Cartou, 1996). The CJEU is precluded from reforming the annulled act. Thus, in its judgment of September 15, 1998 (European Night Services and Others v. Commission), the Court ruled that the submission of conclusions in an action for annulment requiring the Commission to adopt specific measures is inadmissible. The Court of Justice is not competent to issue injunctions (categorical orders) to the Community institutions or to substitute itself for them.

The action must be brought within two months, as the case may be, of the publication of the act, or of its notification to the plaintiff or, failing that, of the day on which it came to the knowledge of the latter. The grounds of illegality relied on in an action for annulment are lack of competence, infringement of procedural form, infringement of the Treaty or of any rule of law relating to its application or misuse of powers, brought by a Member State, the European Parliament, the Council or the Commission. Any natural or legal person may also, under the same conditions, institute proceedings against an act addressed to that person or which is of direct and individual concern to him or her, and against a regulatory act which is of direct concern to him or her and does not entail implementing measures.

If the action is well founded, the Court of Justice declares the contested act null and void. However, the Court of Justice indicates, if it considers it necessary, which effects of the annulled act are to be regarded as definitive (Article 264 TFEU, ex Article 231 TEC), thus applying the principle of proportionality. An action for annulment brought against an act which is merely confirmatory of an earlier act, so that the annulment of the confirmatory act is confused with that of the earlier act, must be considered as moot and therefore inadmissible (ECJ Judgment No. 26/76, Metro/Commission).

Appeal in interpretation

The Court of Justice of the European Union gives preliminary rulings (preliminary rulings) on interpretation in order to contribute to the uniform application of EU law in all Member States. The Court of Justice of the European Union has jurisdiction to give preliminary rulings on:

a) interpretation of the Treaty;

b) the validity and interpretation of acts adopted by Union institutions, bodies, offices or agencies.

Where such a question is raised before a court or tribunal of a Member State and that court or tribunal considers that a decision on the question is necessary to enable it to give judgment, it may request the Court of Justice to make a judgment. If such a question arises in a case pending before a national court against whose decisions there is no judicial remedy under national law, that court must refer the matter to the Court of Justice (Art. 267 TFEU, ex-Art. 234 TEC). Therefore, both the supreme courts of the Member States and the courts that pronounce a judgment in a specific case that is not subject to appeal under national law are entitled to lodge an appeal on interpretation (Filipescu & Fuerea, 1999). The national court that initiates an appeal on interpretation will stay the pending proceedings and will communicate its judgment to the Court, which will notify it, through its Registrar, to the parties concerned, the Member States and the Commission,

and to the Council if the act in question emanates from the Council. The parties, the Member States and the institutions of the European Union shall have two months within which to submit written observations to the Court. After the Advocate General has delivered his Opinion and the Judges have deliberated, the judgment shall be delivered in open court and transmitted by the Registrar to the national courts, the Member States and the institutions concerned.

As emphasized by Louis Cartou, unlike proceedings for an annulment, which penalizes, proceedings for interpretation prevent (Cartou, 1996). The judgment of the CJEU given in a preliminary ruling is res judicata only as between the parties to the specific dispute before the national court. Preliminary rulings perform a kind of guiding function for national law with a view to achieving a uniform application of European Union law and the formation of consistent case law in all member countries. The concept of 'presumptive binding force of preliminary rulings' defined by M. Kriele with regard to German law, accurately describes the effect of the Court's decisions (Kriele, 1976).

Appeals of full jurisdiction

Appeals of full jurisdiction enable the Court of Justice of the European Union to rule on all the factual and legal elements of the case, modifying the judgment of the Community body that has been challenged, in order to establish a different solution binding on the parties (Filipescu & Fuerea, 1999). This allows the Court to substitute its own decisions for those of the Community institutions. The appeal of full jurisdiction differs from the other appeals where the Court of Justice did not have the possibility of reforming the acts in question. These are appeals of full jurisdiction:

a) Actions for failure by a Member State to fulfil its obligations under the founding treaties. If the Commission considers that a Member State has failed to fulfil an obligation under the Treaty, it may deliver a reasoned opinion after first giving the State concerned the opportunity to submit its observations. If the Member State concerned does not comply within the period laid down by the Commission, the latter may refer the matter to the Court of Justice of the European Union (Article 258 TFEU, ex Article 226 TEC). We note that this sets up *an administrative appeal prior to* referral to the Court of Justice of the European Union. When a Member State fails to comply with its Treaty obligations, the Commission will invite the Member State to submit its observations by sending a letter setting out the facts of the dispute and all the information necessary for the Member State to remedy the Treaty infringement or, if it does not accept the Commission's point of view, to prepare its defense in the proceedings. After receiving the observations of the State concerned, if the Commission considers that the State has failed to fulfil its obligations under the Treaty, it may issue a reasoned opinion. The Commission enjoys a discretionary power in issuing the opinion and has a broad discretion as to whether Member States have fulfilled their obligations. The delivery of a reasoned opinion is mandatory only as an administrative precondition (administrative appeal) for the Commission to bring an action before the European Court of Justice. The purpose of the pre-litigation preliminary administrative procedure is, on the one hand, to give the Member State the opportunity to fulfill its obligations under the Treaty and, on the other hand, to benefit itself from its rights to defend itself against the objections raised by the Commission, this dual purpose imposing a reasonable time limit within which to reply to the formal letter and to follow up the reasoned opinion or, if necessary, to prepare its defense (Manolache, 1999).

*b) Appeal against sanctions designed to enforce European Union law***.** The Treaties

and secondary legislation may impose sanctions on States or natural and legal persons. The appeal against the sanctions applied to the member states was still regulated by the Treaty of Paris art. 88 para. 3 and 4. The appeal against the sanctions applied to individuals was regulated in art. 36, 44 and 92 of the ECSC Treaty; Art. 172 of the EEC Treaty, art. 83 and 144(b) of the CEEA Treaty. *Appeals against administrative and disciplinary sanctions imposed on EU officials are of* particular importance for European administrative law.

Article 9 of Annexe IX to the Staff Regulations of Officials of the European Union provides that the disciplinary penalties applicable to officials of the European Union are:

a) written warning;

b) reprimand;

c) suspension of advancement in step for a period of between one and twenty-three months;

d) demotion in step;

e) temporary demotion for a period of between 15 days and one year;

(f) demotion within the same function group;

g) classification in a lower function group, with or without demotion;

h) removal from office.

Officials of the European Union who are directly affected by these sanctions as well as any other interested person covered by the Staff Regulations (contract agents) (Călinoiu & Vedinaș, 1999) may use the remedies provided for by the Staff Regulations.

To lodge a judicial appeal to the European Court of Justice, following the procedure laid down in the Staff Regulations of Officials of the European Union, the following *administrative procedures* must be completed:

—*Exercising the right to petition***.** Any person to whom the Staff Regulations apply may refer the matter to the appointing authority for a decision concerning him or her. The Appointing Authority shall notify the person concerned of its reasoned decision within four months of the date on which the request was made. If, on the expiry of that period, there is no reply to the request, this is equivalent to an implied decision to reject it, which may be the subject of a complaint to the appointing authority (Article 90 (1) of the Staff Regulations). By means of the right of petition, the person concerned does not bring an appeal against an act which does him an injustice, but asks the institution to which he belongs, through the appointing authority, to take a particular decision concerning him (Călinoiu & Vedinaș, 1999). Analyzing art. 90 par. 1, final sentence, we observe that the European Union law enshrines the implicit or assimilated administrative act consisting in the refusal of the competent authority to resolve a request.

—*Exercising the administrative remedy (administrative appeal).* Any person to whom the Staff Regulations apply may submit a complaint to the appointing authority against an act adversely affecting him or her, either because the appointing authority has taken a decision or because it has failed to take a measure required by the Staff Regulations (Article 90(2) of the Staff Regulations). The complaint must be lodged within three months. This period runs: from the day of publication of the act in the case of a normative administrative act; from the day of notification of the decision to the addressee and in any event at the latest from the day on which the person concerned became aware of the act in the case of an individual administrative act. If the individual act causes inconvenience to a person other than the person to whom it is addressed, the period of three months shall run for that person from the day on which he becomes aware of the act and in any event at the latest from the day of its publication. The complaint must be lodged within three months of the expiry of the time limit for the reply where the complaint is lodged against an implied decision of rejection within the meaning of Article 90(1) of the Staff Regulations. The Appointing Authority shall communicate its reasoned decision to the person concerned within four months from the date on which the complaint was lodged. If there is no reply by the end of that period, failure to reply shall be deemed equivalent to an implied decision to reject the application, subject to appeal to the

European Court of Justice.

Officials of the European Union shall address their initial request or complaint to the Appointing Authority through their hierarchical superior. If the act emanates from the official's immediate superior, the matter may be referred directly to the authority immediately superior (Article 90 (3) of the Staff Regulations). In order for an appeal to the Court of Justice of the European Union to be admissible, it is necessary that the appointing authority has first been seized with the complaint, in compliance with Article 90(2) of the Treaty on European Union. Two of the Staff Regulations and that authority must have rejected the complaint explicitly or implicitly. Such a complaint is in the legal nature of an *administrative appeal which is* binding for the purposes of judicial review before the Court of Justice of the European Union.

The lodging of an administrative appeal does not suspend the execution of the contested act. However, the Statute allows the person concerned to apply to the Court of Justice for the suspension of the contested act pending the outcome of the preliminary complaint (Article 91(4) of the Staff Regulations). An appeal to the Court of Justice of the European Union must be lodged within three months of the date of notification of the explicit decision or of the expiry of the time limit for a reply in the case of an implied decision. However, where an express decision to reject a complaint comes after the implied decision to reject the complaint but within the time limit for appeal, it starts the time limit for appeal running afresh (Article 91 (3) of the Staff Regulations).

Art. 2 para. Three of the Staff Regulations allows two or more institutions to entrust to one of them or to an institutional body the powers of the appointing authority. In this case, the right of petition and administrative appeal will be lodged with the body delegated to exercise the powers of appointment (Article 91a of the Staff Regulations).

c) Action for non-contractual liability. Any interested person may apply to the Court of Justice of the European Union for compensation in respect of damage caused by the institutions and agents of the European Union in the performance of their duties. This has already been stipulated in Articles 6, 34 and 40 of the ECSC Treaty, Article 187 of the EAEC Treaty and Article 235 of the EEC Treaty, now Article 268 TFEU.

d) Appeal in contractual liability. The Court may be entrusted with the settlement of a contractual dispute, as an arbitral tribunal, if an arbitration clause in a contract so provides. Art. 272 TFEU (ex. - Art. 238 TEC) gives the Court of Justice of the European Union the possibility to give judgment on the basis of an arbitration clause in a public or private law contract concluded by or on behalf of the Union.

The limits of the review carried out by the Court of Justice of the European Union of discretionary decisions of the Union institutions

The limits within which discretionary decisions of the EU institutions may be subject to review by the Court of Justice of the European Union

Judicial protection against discretionary decisions taken by the Union institutions is provided by the Court of Justice of the European Union. It *ensures that the law is observed in the interpretation and application of the Treaties* (Article 19 TEU). This provision also defines the limits within which the decisions of the EU institutions of a discretionary nature are subject to review by the Court:

—Legal control stops where the law ceases to apply and where other aspects determine the decision, such as the technical or political expediency of a measure. One of the characteristics of the discretionary power is precisely that the admissible extralegal aspects limit the control of the judge. The Court's opinion in case 191/1982 (*Fediol v.*

Commission) is relevant, expressing in the same terms the relationship in principle between discretionary power and judicial review: 'In this respect, without being able to interfere in the discretion reserved to the Community authorities by the regulation cited, the court is called upon to exercise the review which is normally its function in the presence of a discretionary power conferred on a public authority.'

—In the case of technical assessments concerning complex economic circumstances, credit is given to the administration of the European Union, with the Court declining to give an opinion. In this respect, Article 33 of the ECSC Treaty provided that 'the Court's analysis may not concern the assessment of a situation arising out of the economic facts or circumstances in respect of which the decisions or recommendations in question were issued'.

—The Court of Justice of the European Union has**,** *exceptionally and in well-defined situations***,** unlimited jurisdiction to review discretionary powers (Article 172 of the EEC Treaty, Article 144 of the EAEC Treaty, Article 36 – 2 – of the ECSC Treaty). *Per a contrario*, judicial review of discretionary decisions is limited **in normal cases.**

—It is, however, permissible to review the assessment of the general economic situation, in particular where there is a complaint to the European Commission that a misuse of powers by a Member State has been committed by abusive exercise of Treaty powers (Art. 114 para. (9) TFEU, Art. 33 para 1, second sentence of the ECSC Treaty).

Levels of decision-making in the Union institutions subject to review by the Court of Justice of the European Union

Scrutiny by the Court of Justice of the European Union takes place at several levels of the decision-making process, namely:

- *Competence check.* The European Union institution must have the necessary competence to take a particular decision. The Union must have the competence to intervene in that area and the institution must be empowered to intervene in practice. In this regard, the ECJ ruled on the jurisdiction *rationae materiae of* the High Authority in judgment No 8/1955.
- *Verification of the correctness of the procedure***.** The decision must be taken in accordance with the correct procedure laid down by law (ECJ Judgment No. 111/1963).
- *Verification of the mandatory nature of the measures***.** In order for the measures to be challenged, they must be of a mandatory nature, specific to the administrative procedure.
- *Verification of factual circumstances.* The facts underlying the decision must be complete and relevant
- *Checking the limits of the administration's discretion***.** The Court will examine whether a rule of primary or secondary law requires an institution to take a particular decision or whether that institution has discretion in that regard and what the limits of that discretion are.

Does Administrative Litigation Exist in International Law?

Since many disciplines that have a profound international manifestation are often treated only by reference to the regional level, this chapter will sketch the general cartography of the boundaries of this topic. The answer is that there is such litigation, and that it refers to the means by which disputes between citizens or entities (such as international organizations) and administrative authorities are settled at the international level. In the first place, this dimension is particularly visible in protecting fundamental human rights and ensuring good administration. Another question is in what way might it be useful to establish a hierarchy of norms *versus* the associated challenges?

It should be pointed out that in public international law, the concept of 'administrative litigation' is not used in exactly the same sense as in domestic law. International law traditionally regulates relations between states and other subjects of international law, such as international organizations and other entities. However, the trajectory of developments in international law has a marked potential for expanding what can be called administrative litigation, all the more so as, against the background of the existence of a type of regional citizenship such as EU citizenship, it could in the near future lead to planetary or cosmopolitan citizenship, and for this the international system must be more malleable, prepared and at some point undergo a series of restructurings. International administrative law has been discussed in the literature for over 60 years (Carlstone, 1959). Another facet is the law of employment relations in international organizations, branching out into the interplay between international administrative law and the jurisdictional immunities of international organizations, which will lead to a dynamic development of international administrative tribunals. For example, there is labor law governing the international civil service and the resulting accountability of the United Nations, UN specialized agencies and international financial institutions such as the World Bank and IMF. Further, the discussion may propagate to good governance, accountability, efficiency and integrity of intergovernmental institutions (Quayle, 2020).

In 2012, the legal literature signaled some specific developments such as doctrines familiar to national administrative systems that were beginning to appear, in incipient forms, in certain areas of international law, a clear example being the obligation to state reasons for administrative decisions in international jurisprudence (Hepburn, 2012). Examples were given from cases in the areas of World Trade Organization law, investment law and human rights law. There are now some procedures and mechanisms in public international law that may be similar to certain aspects of administrative litigation in domestic law. Such is the settlement of disputes between states, whereby states can bring disputes to the International Court of Justice (ICJ) to resolve conflicts in a manner similar to the procedures in administrative litigation. Another considerable development is litigation within international organizations. They have their own procedures for settling disputes or appeals, which can be considered equivalent to certain aspects of administrative litigation. There is a trend towards the development of similar mechanisms and procedures for the settlement of disputes between states and other subjects of international law.

Another facet of administrative litigation in international law is closely related to transnational law and international investment law along the lines of state contracts, insofar as these effects could be addressed to both public (state and governmental) and private (non-governmental, civil society) actors (Tietje & Nowrot, 2006). These debates have been marked by the characteristics of transnational law among which we report: 1) the extension of jurisdiction across the borders of nation states, which has implications for individuals, corporations, public or private agencies and organizations; 2) regulations guaranteed neither by nation-state agencies nor by international legal institutions or instruments such as treaties or conventions; or 3) a hybrid regulatory space that does not yet (fully) exist, but for which a need is felt in cross-border interactions (Popa Tache, 2020). The diversity contained in what we mean by state contracts has also contributed to this framing: from loan or financing agreements or financial collaboration agreements with other states or international financial organizations, to concession or lease contracts for goods or services belonging to public property or public procurement contracts (Popa Tache & Săraru, 2024).

The legal space of administrative disputes in international law

In international law, administrative litigation is influenced by various sources of law, such as international treaties, customary international law and general principles of law. The International Court of Justice (ICJ) and other international tribunals are paramount in the interpretation and application of these rules (Brownlie, 2008). According to Article 38 of the ICJ Statute, the main sources of international law include international treaties, international custom, general principles of law recognized by civilized nations, judicial decisions and the doctrines of the most qualified jurists (Shaw, 2014).

Hierarchies of norms: European Union law vs. international law

In the European Union, rules are prioritized at the level of administrative litigation:
1. Founding treaties (TEU, TFEU)
2. EU Charter of Fundamental Rights
3. Regulations, directives, decisions
4. Recommendations and opinions
5. National constitutions
6. National legislation
7. Administrative acts

In international law, following the same thematic level, the hierarchy of norms is:
1. United Nations Charter
2. International treaties
3. International customs
4. General principles of law
5. Court decisions
6. Doctrines of prestigious jurists
7. National constitutions
8. National legislation
9. Administrative acts

The importance and challenges of administrative litigation in international law

The protection of fundamental rights and the pursuit of compliance with international norms by states has been at the core of the European Court of Human Rights (ECHR), essential in protecting the rights of citizens against administrative abuses (Harris et al., 2014). This is not to say that there are not still many types of significant clashes, including the diversity of national legal systems, the lack of a centralized international judicial authority, and difficulties in ensuring the implementation of international decisions at the national level (Klabbers, 2013). The content of this chapter highlights that the continued development of international norms and collaboration between states can contribute to improvements in this area.

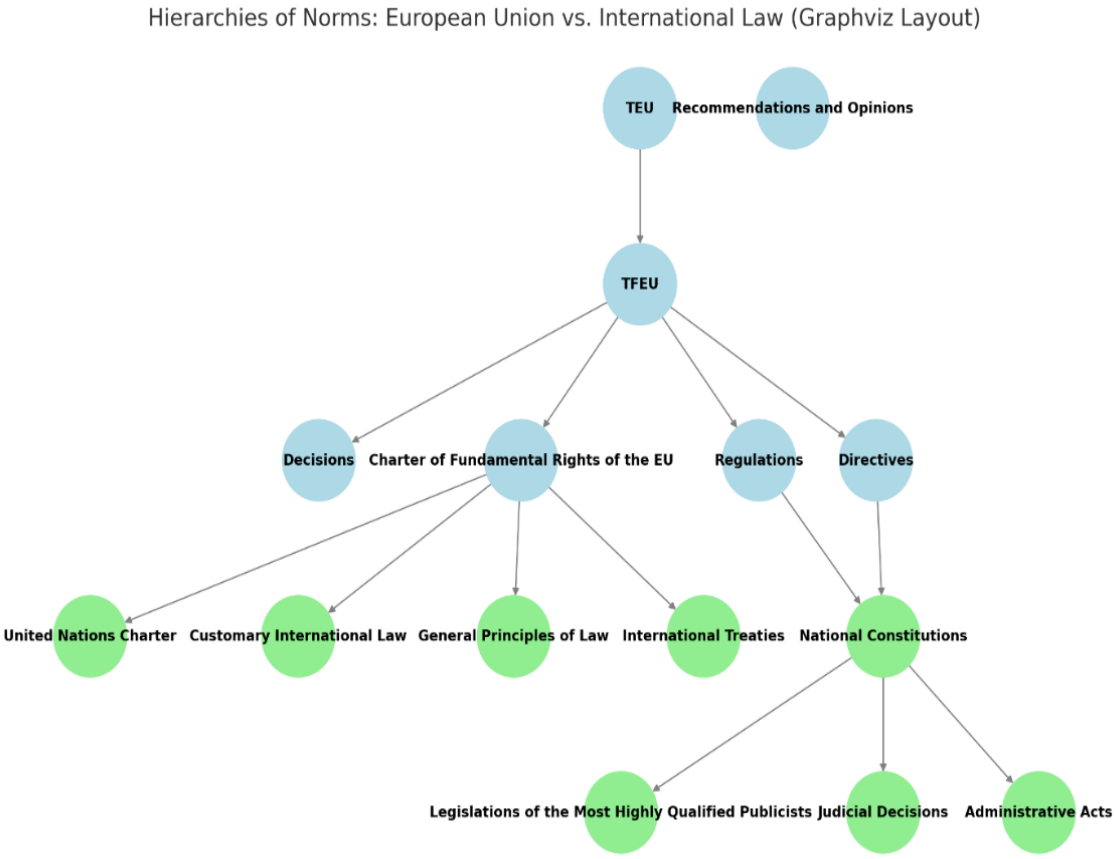

Figure 1. Hierarchy of norms: European Union law vs. international law
(Source: Author's own research)

Conclusions

The outline of some of the solutions is sketched out in this article starting from the evolution and implications of administrative litigation within the European Union and in international law. The central role of the Court of Justice of the European Union in the enforcement and judicial review of the decisions of the European institutions is emphasized as crucial for guaranteeing legality and protecting citizens' rights. The article highlights how the CJEU intervenes to limit the discretionary power of the EU institutions and to interpret the treaties correctly, thus striking a balance between institutional autonomy and respect for legal norms.

An analysis that supports the search for solutions looks at the potential of extending the concept of administrative litigation in international law, emphasizing the relevance of this field in protecting fundamental rights and promoting good governance at the global level. This is all because the article brings into question not only the theoretical and jurisprudential aspects of administrative litigation, but also the practical impact of these developments on the diversity of national legal systems and the promotion of European legal cohesion.

Finally, we emphasize the need for closer harmonization and strengthening of legal mechanisms in the European Union in order to support an efficient and accessible judicial system for citizens. This approach could contribute to a better protection of individual rights and to strengthening confidence in European and international institutions, in a period marked by particularly complex global legal and political dynamics.

References

Alexandru, I., Gorjan, I., Ivanoff, V., Manda, C.C, Nicu, A.-L., & Săraru, C.-S. (2005). *European Administrative Law*, Lumina-Lex Publishing House, Bucharest.

Avram, I. (2003). *Contractele de concesiune*, Ed. Rosetti, Bucharest.

Bell, M. (2008). *Racism and Equality in the European Union*. Oxford University Press, Oxford.

Brownlie, I. (2008). *Principles of Public International Law*. 7th ed., Oxford University Press, Oxford

Carlston, K. (1959). *International Administrative Law: A Venture in Legal Theory*, Emory University Law School, Atlanta.

Cartou, L. (1996). *L'Union Européenne, Traité de Paris-Rome*, Maastricht, 1996, 2nd ed., Dalloz.

Călinoiu, C., Vedinaş, V. (1999). *Teoria funcţiei publice comunitare*, Ed. Lumina-Lex, Bucharest.

Craig, P. (2012). *EU Administrative Law*. Oxford University Press, Oxford.

De Búrca, G. (2011). *EU Law and the Welfare State: In Search of Solidarity*. Oxford University Press, Oxford.

Dragoş, D. (2000), Recursul administrativ prealabil în dreptul administrativ comunitar, *Revista Transilvană de Ştiinţe Administrative* no. 2 (5), p. 116-123

Elias, O. (ed.), (2012). *The Development and Effectiveness of International Administrative Law*, Brill Nijhoff, Leiden.

Filipescu, I. P., Fuerea, A. (1999). *European Community Institutional Law*, Fourth Edition, Actami Publishing House, Bucharest, 1999.

Harlow, C. and Rawlings, R., 2014. *Process and Procedure in EU Administration*. Oxford: Hart Publishing.

Harris, D. J., O'Boyle, M., Bates, E. P., and Buckley, C. M. (2014). *Law of the European Convention on Human Rights*. 3rd ed., Oxford University Press, Oxford.

Hepburn, J. (2012). The Duty to Give Reasons for Administrative Decisions in International Law, *International and Comparative Law Quarterly*, 61(3), pp. 641–663. https://doi.org/10.1017/S002058589312000309.

Klabbers, J. (2013). *International Law*. Cambridge University Press, Cambridge.

Koch, B. (2014). *Administrative Law and Policy of the European Union*. Oxford University Press, Oxford.

Kriele, M. (1976), *Theorie der Rechtsgewinnungentwickelt am Problem der Verfassungsinterpretation*, 2nd edition, Berlin.

Mendes, J. (2009), The effectiveness of judicial protection and the preliminary ruling procedure: A constitutional matter, *European Constitutional Law Review*, 5(1), pp. 49–73.

Manolache, O. (1999). *Drept comunitar*, *vol. III, Justiţia comunitară*, 2nd edition, All Beck Publishing House, Bucharest.

Popa Tache, C. E., Săraru, C.-S. (2024). Yesterday and Today for State Contracts – *Explicationibus* on the Routes of Administrative Law and Public International Law, *International Investment Law Journal* 4 (2), p. 198–207.

Popa Tache, C. E. (2020). *Introduction to International Investment Law*, Ed. Adjuris International Academic Publisher, Bucharest, Paris, Calgary.

Quayle P. (ed.), (2020). The Role of International Administrative Law at International Organizations, Chapter 1. 'The Modern Multilateral Bureaucracy: What is the Role of International Administrative Law at International Organizations?' *AIIB Yearbook of International Law*, Brill. https://doi.org/10.1163/9,789,004,441,033.

Schwarze, J. (2006). *European Administrative Law*. Sweet & Maxwell, London.

Shaw, M. N. (2014). *International law*. 7th ed., Cambridge University Press, Cambridge.

Tietje, C., Nowrot, K. (2006). *Laying Conceptual Ghosts to Rest: The Rise of Philip C. Jessup's Transnational Law' in the Regulatory Governance of the International Economic System,* in Tietje, C., Brouder, A., Nowrot, K. (eds.) *Philip C. Jessup's Transnational Law Revisited – On the Occasion of the 50th Anniversary of its Publication,* Halle-Wittenberg: Martin-Luther-Universität, pp. 17–43.

Ținca, O. (2002). *General Community Law*, 2nd ed., Didactic and Pedagogical Publishing House R. A., Bucharest.