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Europeanisation of Administrative Law in Romania: Current Developments in Jurisprudence and Legislation

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Abstract

This comment concentrates on the issue of the Europeanisation of the national administrative law in the Member States of the European Union. It focuses on several developments that have taken place in the recent years in Romania in this field. The exception of illegality with regard to the judicial review of administrative acts is discussed in connection with the concept of voluntary adoption of the EC law principles into the national administrative law. The ruling of the Romanian Court of Cassation and Justice whose decisions have rendered ineffective a provision of the national law based on the broad principle of legal certainty; derived from the EC law, is being analyzed. The paper also analyses legislative attempts that fall within the same process of Europeanisation of national administrative law. The authors argue that the efforts aimed at Europeanisation being advanced by the courts and the legislature are commendable though not yet complete. The unity of treatment between national law and European law will benefit, in time, from such initiatives.

1 Introduction

An important body of literature has been recently committed to the issue of Europeanisation of administrative (or public) law in the Member States of the European Union.[1] On the basis of the growing

[1] See, for instance, J.H. Jans, R. de Lange, S. Prechal, R.J.G.M. Widdershoven, *Europeanisation of Public Law,* Europa Law Publishing, Groningen, 2007; F. Snyder, *The Europeanisation of Law: The Legal Effects of European Integration*, Hart, 2000; X. Groussot, 'EU Law Principles in French Public Law: Un Accueil Réservé', *REALaw* no. 1, 2007, pp. 9-49; P. Birkinshaw, *European Public Law,* London 2003; P. Craig, *European Administrative Law,* Oxford, Oxford University Press, 2007; D.M. Curtin, R.A. Wessel (eds), *Good Governance and the European Union,* Intersentia, 2005; F. Stroink, E. van der Linden (eds), *Judicial Lawmaking and Administrative Law,* Intersentia, 2005; G. Anthony, *UK Public Law and European Law: The Dynamics of Legal Integration,* Hart, 2002; C. Hilson, 'The Europeanisation of English Administrative Law: Judicial Review and Convergence', *EPL* 2003, pp. 125-145; K.H. Ladeur (ed), *The Europeanisation of Administrative Law,* Aldershot, 2002; J.A.E. Vervaele

expertise of national courts in applying EU law, older members of the EU have gradually experienced a noticeable influence of the European law and European law principles on the national legal order. Thus, the national administrative law is becoming Europeanised. This influence is perceptible not only in cases when European law is applied by the national courts, but has crossed over in cases involving purely internal matters.

The sources of Community law include not only written law, but also legal principles, which are derived from the treaties, the secondary legislation, and the jurisprudence of the ECJ. From the EC Treaty (Art. 288) it also emerges that the general principles that are common to the laws of the Member States are part of the legal principles of Community law.

In this context, the doctrine makes a distinction between the legislative or jurisprudential influence of EU law over national law when the courts and the administration implement Community law, on the one hand, and the *voluntary adoption* of Community law principles in national legal order, on the other hand. The latter is not directly determined by the application of Community law. It provides for a voluntary reception of principles developed by the European Court of Justice in purely internal matters, due to the fact that they are considered 'a worthwhile addition to the national law'.[2] Other terms that describe the same development include: *spill-over, cross-fertilisation, horizontal convergence*.[3]

2 Judicial Review of Administrative Decisions in Romania – Tradition, Challenges and Reform

In Romania, the judicial review of administrative decisions is carried out by the ordinary courts – courts of first instance, tribunals, courts of appeal and the Highest Court of Cassation and Justice. From tribunals up, all courts have specialized sections (Units of Judges) for administrative and fiscal matters. In some cases, for reasons of internal organization,

(ed), *Administrative Law application and enforcement of Community Law in The Netherlands,* Deventer/Boston, 1994; D. Obradovic, N. Lavranos (eds), *Interface between EU Law and National Law,* The Hogendorp Papers, Groningen 2007; K. Schiemann, 'The Application of General Principles of Community Law by English Courts', in M. Andenas, F. Jacobs (eds), *European Community Law in the English Courts*, Oxford 1998, pp. 137-148.

[2] Jans, de Lange, Prechal, Widdershoven, *supra 1*, p. 8.

[3] J.W.F. Allison, 'Transplantation and Cross-Fertilization', and M. Bell, 'Mechanisms for Cross-Fertilization of Administrative Law in Europe', in Beatson and Tridimas (eds), *New directions in European Public Law,* Hart 2000, pp. 169-182 and pp. 147-167; G. Anthony, 'Community Law and the Development of UK Administrative Law: Delimiting the Spill-Over Effect', *EPL* 1998, pp. 253-276; C. Harlow, 'Voices of Difference in a Plural Community', in Beaumont, Lyons and Walker (eds), *Convergence and Divergence in European Public Law,* Hart, 2002, pp. 199-224.

these sections are joined with the civil sections or the commercial ones. First instance courts also judge administrative law cases, based on special regulations, but they are heard together with the rest of the cases, not separately like at the upper levels.

The judicial review of administrative decisions has had a long tradition in Romania, but at times there were challenges to overcome as well. Thus, despite a long tradition of judicial review (since 1864), between 1948 and 1965 the judicial review of administrative decisions was abolished, due to the communist conception that 'the state can do no wrong because it is the expression of the will of the working class', and also because the administrative organs were 'subordinated to the Great National Assembly, which oversees their activity, so there is no need for judicial review'. From 1965 to 1990, the judicial review was re-instated, and quite clearly regulated in 1967, but few cases were brought in front of the ordinary courts on the basis of these regulations, due to the control of the communist state.

One of the first laws adopted by the new Romanian Parliament after the regime change in 1989, even before a new Constitution was voted on, was the Law on Judicial Review of Administrative Acts no. 29/1990. It was a law inspired from the ones adopted in 1925 and 1967, but its application would prove to be more effective in the years following the collapse of the communist regime.

As was expected, the adoption of the Constitution in 1991 brought changes in the application of the Law 29/1990, which was interpreted from that moment on according to the principles provided by the fundamental law. For instance, the judicial review was opened up against administrative acts issued by any public authority, not only by administrative authorities as stated in the 1990 Law (Decision 97/1997 of the Constitutional Court[4]). The competence for the review remained at the level of ordinary courts, within which sections (Units of Judges) for administrative law cases were established.

At the time of the constitutional revision in 2003, the provisions regarding the judicial review were once more amended, in the sense that aggrieved persons could challenge a decision based either on their rights or their legitimate interests (Art. 52 of the Constitution).

Due to the fact that the law from 1990 was outdated and in need of revision, a new law; Law no. 554/2004[5] came into place in 2004. Further amendments were adopted in 2005, 2007 and 2008, on the account of the EC laws and recommendations, but also as a result of the decisions of the Constitutional Court. According to the 2004 law, administrative acts in general are subjected to the review of the ordinary courts, which perform this task in special Units of Judges specialized in administrative and fiscal contentions.

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4 Decision published in the *Official Monitor* no. 210 /1997.

5 Published in the *Official Monitor* no. 1.154 of 7th December 2004.

Judicial review can only refer to administrative acts which have the nature of decisions (expression of public power that produces legal effects). This condition is meant to preclude actions against *administrative operations,* such as:

a) Interpretative acts (circulars, directives, guidelines), which in most cases are considered not to produce legal effects. When they do produce legal effects, review is possible due to the fact that they become in substance administrative acts.

b) Proceedings necessary for the adoption/issuance of administrative acts: consultations, proposals. They can be challenged only together with the act that they served.

c) Purely informative and declaratory acts – they have the role of acknowledging a fact, without any addition to the effects associated by the law to that fact. Evidently, such acts are reviewable with regard to their content and the reality of the facts established, but this is mostly done by the civil sections of the courts, and not by the administrative ones.

Before the new law was adopted in 2004, there were debates about the possibility to directly challenge a general decision, but now the legislation is clearer on this issue. Currently, all administrative acts, whether general or individual, are within the scope of the review by the courts. The difference lies in the deadline for taking them to court: *anytime* for general acts, and within *6 months* from notification, for individual acts and administrative contracts.

3 Europeanisation of Administrative Law in Romania

3.1 Introduction

In Romania, the general impression is that the Europeanisation of national public law is still in its infancy, due to the short time the Community law has been directly applied. Nevertheless, the courts are catching up with the harmonization of national legal rules when European Community law is applied, and go even beyond that and apply European law and principles to purely internal administrative matters. One of the first cases involved striking out provisions of the national law that imposed a tax for first-registration in Romania of cars bought within the EU.[6] It was done by a Tribunal (second-tier court), and confirmed by the higher courts in appeal.

[6] The Tribunal of Arad City, Administrative Contentious Section, Case no. 2563 of 7 November 2007, followed by other decisions of the tribunals. The courts considered, among other aspects, the views expressed by the ECJ in *Commission* v. *Finland,* C-10/08.

In the next paragraphs, we will discuss how the Romanian Court of Cassation and Justice has managed to go further than just applying principles of EU law to cases involving EU law, which is common in the jurisdictions of the Member States, towards a voluntary adoption of Community law principles within the national administrative law, which is not so common.

3.2 Exception of Illegality and the Influence of European Law Principles

3.2.1 The Scope of the Exception of Illegality and its Saga in the Romanian Law

In comparative administrative law, the exception of illegality is being considered a means of defence against unlawful general acts, when there is no interest for their annulment, or where there is a time limit for their annulment and this time limit has expired.[7] This procedure, called also 'the plea of illegality', can be used, for instance, when during proceedings for the annulment of an individual act the applicant wishes to challenge a more general measure on which that particular decision is based.[8] In EU law, the plea of illegality[9] is also justified by the fact that regulations can be directly challenged only by the Member States and by Community institutions.

In Romania, the existence of a time limit for challenging *individual* decisions (6 months from the date of notification, maximum 1 year from the date of issuance), has prompted the legislature with the idea of providing for a corrective procedure, which is to be used when the time limit has expired. The reasoning for this was based on the imperative of upholding at any time the principle of legality.[10] Thus, the 2004 law stated that an *exception of ille-*

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[7] See, for the French law, Ch. Debbasch, J.C. Ricci, *Contentieux administratif,* 7ème éd., Ed. Dalloz, Paris, 1999, p. 330.

[8] See, for EU law, A. Barav, 'The exception of Illegality in Community Law: A Critical Analysis', in *CMLRev* 366, 1974, p. 373; P. Craig, G. de Burca, *EU Law – text, cases and materials,* 3rd edition, 2003, Oxford University Press, p. 524; S. van Raepenbusch, *Droit institutionnel de l'Union et des Communautés européennes,* 3ème éd., De Boeck Université, Bruxelles, 2001, p. 572; T.C. Hartley, *The Foundations of European Community Law – an Introduction to the Constitutional and Administrative Law of the European Community,* 4th ed., Oxford University Press, 1998, p. 3401; J. Rideau, *Droit institutionnel de l'Union et des Communautés européennes,* 3ème éd., L.G.D.J., Paris, 1999, p. 749.

[9] Article 241 of EC Treaty.

[10] On the difficulty of the relation between legal certainty and legality, see S. Boissard, 'Comment garantir la stabilité des situations juridiques individuelles sans priver l'autorité administrative de tous moyens d'action et sans transiger sur le respect du principe de légalité? Le difficile dilemme du juge administrative', *Cahiers du Conseil Constitutionnel* no. 11, pp. 1-14, available at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/fran-

gality can be invoked at *any time, even for administrative acts issued before the date of its entry into force*. This means that a 'Pandora's Box' has been opened, allowing courts to indirectly review and render ineffective individual acts that have been considered definitive for a long time.

The exception of illegality may be raised in any proceedings before the court, and empowers the judge to disregard the act at issue, as being unlawful, though without annulling it. This works for both *individual* and *general* acts. For individual acts, however, *the effect is similar with annulling the act,* because it renders that act ineffective for those to whom the act is addressed. This is why in the comparative law this institution is mostly limited to general decisions. Thus, in French administrative Law, which was the source of inspiration for the Romanian administrative Law over time, the exception of illegality is limited to general acts. It can be raised against general decisions, which are directly challengeable only for two months after publication, even after the expiration of the deadline.[11] In EU law, the exception is limited to regulations. In Romania, general acts can be challenged at any time, and thus the exception of illegality can also be raised at any time.

The provision that extended the scope of the exception to individual acts has raised strong criticism in the doctrine.[12] The consequence of the provision is that no matter the time limits set for challenging individual decisions, they have virtually no effect, being shadowed by the possibility to put the act into question indefinitely. Moreover, the principle of legal certainty is seriously infringed upon when individual acts are open for review indefinitely. Unfortunately, this principle is yet to be recognized in Romanian law. All these considered, the opinion in the doctrine was that the exception of illegality should be admissible only as long as the time limits for directly challenging the act have not expired,[13] and by no means should it be accepted for acts issued before the new law has entered into force (2004).

Attempts from the jurisprudence to limit the applicability of this provision, by interpreting it in a restrictive manner,[14] have been rendered ineffective by the legislature, who revised the law in 2007; it currently states explicitly that no such interpretation is possible. This attempt on behalf of the court judges can be regarded as being in line with the principle of

cais/documentation-publications/cahiers-du-conseil/les-cahiers-du-conseil-constitutionnel.5069.html.

[11] Ch. Debbasch, J.C. Ricci, 1999, *supra 7*.

[12] G. Bîrsan, B. Georgescu, 'Excepția de nelegalitate în reglementarea Legii nr. 554/2004', in *Curierul Judiciar* no. 11/2007, p. 57; E. Albu, 'Neconstitutionalitatea Legii nr. 262/2007 pentru modificarea si completarea Legii contenciosului administrativ', in *Curierul judiciar* no. 9/2007, p. 45; D. C. Dragos, *Legea contenciosului administrativ comentata,* Bucuresti, C. H. Beck, 2005, p. 160.

[13] D.C. Dragos, 2005, *supra 11*.

[14] The Highest Court of Cassation and Justice, decision no. 5455/2005, in *Jurisprudenta ICCJ*, 2005, p. 15.

consistent interpretation, which empowers national judges to correct written national law according to the European law and principles (Case 80/86 *Kolpinghuis*).[15]

3.2.2 Voluntary Europeanisation and the Principle of Legal Certainty

Recently, the Highest Court of Cassation and Justice, the Administrative Law Section, took the matter into its own hands, deciding not to apply the aforementioned provision to acts issued before 2004. The obligation for national courts to apply *ex officio* the Community law is a constancy of the doctrine and jurisprudence of the ECJ and of the courts in the Member States,[16] and was therefore considered by the Romanian court as well.

The reasoning behind the decision was constructed around the principle of *legal certainty*, which has been promoted by the European Court of Justice and by the European Court of Human Rights. The principle reflects the 'ultimate necessity of clarity, stability and intelligibility of the law'; it is an 'umbrella concept' which encompasses principles like legitimate expectations, acquired rights and non-retroactivity,[17] but also transparency.[18]

It should be noted that the courts from Member states usually refuse to apply the principles of Community law in purely internal matters. When they do apply these principles, they do it by renouncing the '*réserve de nationalité*' concept.[19] On the other hand, jurisdictions that have similar principles in national law tend to cover this refusal with the application of their own principles of law that fall under the EC 'umbrella' law principles (be they *legitimate expectations, non retroactivity,* or *acquired rights*).

In this context, it is the first time for Romanian courts to render ineffective a provision of a national law based on European principles of law (written or unwritten), without having a European legal instrument (directive, regulation or decision) as the object of the review. In other words, the cases regarded purely internal matters.

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[15] See J.H. Jans, R. de Lange, S. Prechal, R.J.G.M. Widdershoven, *supra 1*, p. 105.

[16] See M. Eliantonio, 'The Application of EC Law *Ex Officio* – Some News From the Italian Administrative Courts', *REALaw*; vol. 1, nr. 2, 2008, pp. 101-111; J. Engström, 'National Courts' Obligation to Apply Community Law Ex Officio – The Court Showing new Respect for Party Autonomy and National Procedural Autonomy?' *REALaw*; vol. 1, nr. 2, 2008, pp. 67-89.

[17] X. Groussot, 2007, *supra 2*, p. 36.

[18] S.Prechal, M. de Leeuw, 'Dimensions of Transparency: The Building Blocks for a New Legal Principle?' *REALaw* no. 1, 2008, p. 51.

[19] X. Groussot, 2007, *supra 2*, p. 35.

The courts' refusal to apply Art. 4 par. 1 of the Law on Judicial Review has started with Decision no. 2547/2008[20] which was the first to 'break the ice'; it was then followed by other decisions with the same reasoning (Decision no. 2786/2008, Decision no. 2885/2008[21]) and then by a Common Opinion of the Judges from the Highest Court of Cassation and Justice, Administrative Law Section, which established the line of these decisions as being the practice of the Court.

Two arguments were brought out by the Court to endorse the blunt refusal to apply Art. 4 par. 1 of the Law to Judicial Review:

a) The first one was derived from the European Convention of Human Rights, which promotes the right to a fair process, and also the principle of legal certainty (ECHR, Decision 6/2007 *Beian* v. *Romania*), in the sense that decisions of the courts should be challenged within a time limit, and should not be open for review for an indefinite time (ECHR, Decision 28/1999 *Brumarescu* v. *Romania*). Based on this argument, and also taking into account that the national judge is the first judge of ECHR and has the obligation to assure the pre-eminence of the Convention against any national provision, without waiting for its abrogation (Decision 2/2007 *Dumitru Popescu* v. *Romania*), the Romanian Highest Court concluded that *definitive administrative acts* should be treated similarly to *irrevocable court decisions*. Moreover, the principle of legal certainty, though not regulated in our legislation, should apply to Romanian administrative law as well.

Two counter-points can be raised in regards to this reasoning:

- The comparative jurisprudence is of the opinion that principles of law can be used for interpreting the written law, not for striking out express, clear provisions of the law.
- The ECHR principles of law can be used in national law cases, in this case there was no human rights matter, but a regular administrative law matter (delimitation of public domain).

b) The second ground used to support this practice is derived from the European principles of legal certainty, upheld by the European Court of Justice – Decision *Netherlands – Vereniging Nationaal Overlegorgaan Sociale Werkvoorziening* (C-383/06), *Gemeente Rotterdam* v. *Minister van Sociale Zaken en Werkgelegenheid* (C-384/06), and *Sociaal Economische Samenwerking West-Brabant* v. *Algemene Directie voor de Arbeidsvoorziening* (C-385/06) – 'It is for the national court to ensure the full application of Community law by setting aside or, in so far as necessary, interpreting a national rule (...) which prevents such application. The national court may apply the Community law principles of legal certainty and the protection of legitimate expectations when assessing the conduct of both the recipient of the amounts lost and the administrative authority'.

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[20] Not published yet.

[21] Not published yet.

It should be noted, also, that in the context of applying the Community Law, the exception of illegality is admissible only as long as the direct action is admissible, and the party should accept that the expiration of the deadline means that the decision is definitive (Decisions *Universitat Hamburg* C-216/82 pt. 5, *Eurotunnel and others* C-408/95, pt. 26, *Banks* C-390/98, pt. 109). The administrative acts that produce legal effects should be prevented from being called into question indefinitely (Decision *AssiDoman Kraft*).[22] As for the time limits established by the national law for challenging a decision, they were considered in line with the principle of effectiveness of national remedies, provided that they are reasonable (Case 33/76 *Rewe*). It has to be noted that the European law principles were invoked in a case where the court was not applying the European law. It was purely an internal matter.

The decisions of the Highest Court affirm for the first time in Romania the prevalence of European principles of law over national written provisions, in purely internal matters. The Court's commitment to the European principles of administrative law and the willingness to go forward and shape the national administrative law practice in accordance with such principles is commendable, considering the reluctance of other jurisdictions to do so explicitly. In France, for instance, the administrative judges do not explicitly recognize the existence of a general principle of legal certainty in purely internal matters, but they feel comfortable with other principles, such as acquired rights and non-retroactivity, which are somewhat part of the larger principle.[23]

In the case of Romania, the trend regarding the Europeanisation of the national administrative law discussed above has to be continued in order for a significant change to take place in this field. For instance, the court has solved only the problem of retroactivity, not the whole issue of the time-limit for raising the exception. Thus, presently, the exception can still be raised at any time, but only for acts issued after 2004, when the Law on judicial review has entered into force. Individual acts can be challenged indirectly, after the time limit for direct challenge has expired, which is also against the same principle of legal certainty. The court should go further and state that the exception can be raised only as long as the time limit for direct challenge has not expired, similarly with the EC law. In this way, the general acts could still be challenged, directly or by exception, at any time. Individual acts, on the other hand, benefit from the expiry of the deadline for review and are considered definitive.

3.3 A Special Revision Procedure for Infringement of EC Law

Another matter subject to considerable debate regarding Europeanisation of national law concerns a proceeding before the Admin-

[22] Case C-310/97 P *Commission* v. *AssiDoman Kraft Products a.o.* [1999] ECR I-5363.

[23] See X. Groussot, *supra 2*, p. 37.

istrative Court, instituted by law. In 2007, one amendment to the Law on Judicial Review, introduced a special *revision* procedure, on the grounds of infringement on the priority of EC law. Thus, after exhausting the appeal procedure against the first instance court's decision, the definitive and irrevocable judgment of the court can be challenged by *revision* (an extraordinary appeal procedure). The revision is based on non-observance and non-application of the EC law in first instance procedure or in appeal.

The reasoning behind such a provision is debatable as it entails the assumption that the first instance judge and the appeal judge have not considered (or they are unable to consider) the EC law when assessing the lawfulness of the administrative decision, which is profoundly incorrect. The lawfulness of an administrative decision is analyzed, after Romania joined European Union in 2007, also in reference to the European Community law, which became part of national law. It is an obligation, not an option for the judges. Any contrary supposition would just 'release' first instance and appeal judges of this obligation, transferring the burden of considering European law upon the judge hearing the case during the *revision* procedure. The European Community law and the jurisprudence of the European Court of Justice do not impose on national jurisdictions to regulate new stages of appeal, but to ensure the proper observance and effectiveness of EC law, using the mechanisms of the national law.

The autonomy of the national law tools for assuring the priority of the EC law, as long as they do not limit the effective implementation of EC law compared to the national law (equivalence principle), or do not make the effective exercise of rights based on EC law practically impossible (principle of practical possibility) is based on several cases judged by the ECJ (Case *Rewe-Zentralfinanz eG and Rewe-Zentral AG v. Landwirtskammer fur das Saarland;*[24] Case *Sagulo, Brenca and Bakhouche;*[25] Case *Von Colson and Kamman v. Land Nordrhein-Westfale*n[26]).

New procedural tools (remedies), imposed by the ECJ jurisprudence on national courts, have the scope of assuring the effectiveness of the EC law when national systems do not offer such effectiveness or when it is insufficient (*Francovich* case law[27]). In the case at hand, no new remedies were set up. The judge in *revision* has at his disposal the same remedies provided for by the law for first instance and appeal judgments – annulment of the act, injunction, and compensation for damages. It is just, in fact, a new appeal procedure, judged this time with the proper consideration for the priority of the European law.

A constructive point may be based on the state liability jurisprudence. The ECJ has admitted that in cases of final judgments issued by the high-

[24] Case 33/76, [1976] ECR 1989.

[25] Case 8/77, [1977] ECR 1495.

[26] Case 14/83, [1984] ECR 1891.

[27] Case C-6 and 9/90 *Frankovich and Bonifaci* v. *Italy* [1991] ECR I-5357.

est administrative courts which infringed European law, without making a reference to preliminary ruling, the state could be held liable for damages (Case C-224/01 *Köbler*). In light of this jurisprudence, the revision procedure could be considered another 'chance' to apply the EC law or make a preliminary ruling, offered to Romanian courts, in order to avoid such liability.

It also has to be mentioned that the jurisprudence *Kühne & Heitz* is not applicable for this case because it regards administrative bodies, not judicial bodies. In *Kühne and Heitz,*[28] the European Court of Justice stated that *administrative bodies* can reopen a definitive decision in certain circumstances: a) national law permits such re-opening; b) the decision was challenged in court, and there is no judicial remedy to that court judgment; c) the court has applied EC law without a preliminary question being referred to the ECJ; d) the court judgment is contrary to a decision of the ECJ and, finally, e) the person interested complains to the administrative body immediately after becoming aware of that judgment of the court.[29]

It could be argued that the same rationale in *Kühne & Heitz* can be used for stating the need to re-open cases before the courts, after the ECJ has judged differently a matter that was already under review by the national courts. Consequently, instituting such a procedure would be another example of voluntary Europeanisation of the Romanian law. This argument does not hold water, for the reason that the *revision* as regulated in Romania law is to be filled within 15 days from the *judgment in appeal*, not within a deadline linked to a decision of the ECJ.

In conclusion, such a procedure could be acceptable as a *second tier appeal procedure,* useful for national law purposes, during which the administrative act is reviewed again by the courts, but it cannot be justified as being a genuine Europeanisation of the judicial review procedure, or as being absolutely necessary from this point of view.

A real Europeanisation of the administrative law procedure before courts would be an action to re-open judgments that are definitive under national law, within a time limit after a new jurisprudence of the ECJ has occurred. This would be admissible only when the national court has decided on the matter on the basis of the European law, with or without preliminary question.

A different solution would be to just adopt a provision in line with the *Kühne & Heitz* jurisprudence. Re-opening an administrative procedure in front of the public authorities would be followed, logically, by a new case in court.

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[28] Case C-453/00 [2004] ECR I-837 and then Case C-392/04 and C-422/04 *i-21Germany GmbH and Arcor* AG& Co. Kg [2006] ECR I-8559.

[29] See, for comments about this decision, J.H. Jans and B.A.T. Marseille, 'Competence remains competence? Reopening decisions that violate Community Law', *REALaw*, Vol. 0, nr. 1, 2007, p. 75-86; M. Ruffert, 'The Stability of Administrative Decisions in the Light of EC Law: Refining the Case Law', in *REALaw,* vol. 1, nr. 2, pp. 127-135.

4 Conclusion

After Romania's accession into the European Union, Community Law has become consistent through the transfer of the jurisprudence of the European Court of Justice in the realm of the national administrative law. The paper critically presented several instances of Europeanisation of the national administrative law while also inquiring about whether or not these evolutions are in line with the trends taking place in other Member States.

In the realm of European law, Romanian courts are in a phase of adjusting to a new way of reasoning the legality of administrative actions. The Community law is gradually becoming a part of our national law; this process takes place concurrently with the occurrence of the administrative justice reform. This poses a greater responsibility on the shoulders of the Romanian administrative law judges.

On the other hand, having access to the experience of the older Member States in applying European law renders this task manageable. It, nonetheless, takes courage to filter national laws through the lens of Community law and principles, especially in a judicial system where upholding the legality principle has been inspired at times by the French, the German and respectively the Austrian legal systems.

In this context, the willingness of the Romanian Highest Court to go on the path of voluntary Europeanisation is even more commendable. The unity of treatment between national law and European law will benefit, in time, from such initiatives. On the other hand, the Parliament's attempt to bring a feature of Europeanisation into the judicial review procedure, though also notable, has not met the intended purpose and needs further consideration.