

Matthias Ruffert (ed.), *The Transformation of Administrative Law in Europe / La mutation du droit administratif en Europe*, Sellier European Law Publishers (München 2007), ISBN 978-3-935808-91-0, €39, 250p.

Administrative law is currently in the process of transformation due to similar reasons but with different effects in different legal systems. Not surprisingly, comparative administrative law is currently enjoying a sort of renaissance. Comparative studies are especially relevant for understanding the reaction to the two major factors of the transformation of administrative law in modern societies: first, the changing role of public law through inter-disciplinary approaches and, second, the increasing integration of legal systems leading to the de-territorialisation of the exercise of public law, especially in the context of EU law. Both have profound impact on the notion of and the tools employed in administrative law. Understanding the effects and reactions in various legal systems is thus a valuable exercise both from a national as well as from a European perspective.

The book *The Transformation of Administrative Law in Europe / La mutation du droit administratif en Europe* edited by Matthias Ruffert mainly addresses the first part of this set of questions. But the last of the twelve contributions to this book also specifically concentrates on the second part of the transformative forces in European administrative law: the development of the formally separate territorially limited legal systems towards a highly integrated legal system in the EU. However, for the debate within the EU context, addressing the first set of questions is an important and unfortunately rarely undertaken exercise. A comparative approach giving a comparative insight into debates and approaches in its various legal systems is also a fundamental aspect of understanding the developing European administrative law.

Contributions to this book are written in English and some in French, by authors with backgrounds in various legal systems. The laudable idea to publish a bilingual approach is an attempt to make the debate in administrative law more accessible to authors from other legal systems. This will hold especially true for those contributions on the German debate by leading authors on German administrative law such as Matthias Ruffert, Andreas Voßkuhle, Athanasios Gromitsaris, Eberhard Schmidt-Aßmann, Wolfgang Hoffmann-Riem and Jens-Peter Schneider. For non-German speakers the book is a good opportunity to access these authors' contributions, if they would not have access to the German language texts. The book is a welcome contribution to the debate of concepts within the EU; opening the debate often held within the closed circles of national legal systems to a wider audience and to allow for cross-fertilisation of ideas and concepts.

In his introductory remarks, Matthias Ruffert reminds the readers about the methodology applicable in comparative public and especially administrative law. The comparative method, which unfortunately far too often simply applies the approach of transferring the idea of 'Rechtskreise' or 'familles de

*droit*' from comparative private law to comparative public law, according to *Ruffert* needs instead to combine elements of description, history, conceptual dogmatism, typology or legal and social functionalism. He lays the basis of comparative approach within the book by introducing the German, English and French systems of administrative law. He then follows the debates of administrative reform starting in the 1980ies with the concepts of administrative reform based on economisation, agencification, new public management tools such as auditing, privatisation and de-regulation as well as re-regulation, the goals of which were to foster transparency, increase performance and orientation towards the citizen. These tools are complemented with the two other major forces influencing the development of administrative law in various legal systems: Constitutionalisation and Europeanisation. Whereas the former had varying effects within the differing legal systems, the latter is a force which has transformed all legal systems alike to a degree unprecedented by other catalysts of change, leading to what by other authors is sometimes referred to as a 'European Administrative Space.'<sup>1</sup> The vision of administrative law that is represented in this book is the more familiar, state centred one, in which legal systems receive impulses for reform either through European legislation or by cross-fertilisation from other legal systems – each however within their own vessel of territorially bound national law.

*Ruffert's* introduction is followed by a contribution by *Jeffrey Jowell* on how far the principles underlying the notions of administrative justice have spread throughout the legal systems in the world to find common standards of administrative activities. His is a very informative overview of systems as diverse ranging from South Africa and Namibia to the UK and the EU. His overview confirms the importance of the strand of constitutionalisation of the debate also in the European context in which the principles of good administration have received recognition not only as general principles of law (and thus being on the level of the constitutional charter of the EU) but also in Article 41 of the Charter of Fundamental Rights of the European Union. This is followed by two illustrations of debates in the French and the German legal systems respectively.

*Pascale Gonod* critically engages with the developments, showing specifically how the influence of Europeanisation has led to the opening of a formally unitarily closed state towards a legal system with a plurality of actors on different levels interacting in order to achieve common goals. *Andreas Voßkuhle* has an equally historic approach focussing on the new public management influences on the delivery of public services and public decision-making. As a result, his contribution is less one of looking at interactions of legal systems but more of one looking at the influence of economic and procedural design approaches to improve the exercise of public functions in Germany. This is an important narrative because admin-

<sup>1</sup> See e.g. OECD-PUMA, 'Preparing Public Administration for the European Administrative Space', *SIGMA Papers Paris* (1998), No 23.

istrative law is not only influenced by normative and constitutional concepts such as constitutionalisation and Europeanisation. It is equally influenced by expectations of the task and purpose of public bodies, their performance and thus procedures ensuring the outcome of results. He outlines the historic shift of the idea of the state starting from a guarantor of rights over a provider of basic services to an enabler of service provision. The contribution of *Vofskuhle* inscribes the transformation of administrative law and the change of perceptions over the decades into this historic context. He does not forget to mention that many of the impulses transforming the vision of the role of public actors in society arise from the very effect of Europeanisation and its tendency to create administrative networks which counteract hierarchic steering approaches which used to be dominant in closed national legal systems. In fact, to him the notion of steering is the central angle for intra-disciplinary and inter-disciplinary work in administrative law.

The third and fourth parts of the book deal largely with the framework for administrative law reform looking at aspects such as the relation between social sciences and administrative law. Contributions therein outline the various aspects of the relation between theory and practice. One set of contributions treat the problem from a more methodological point of view, for example those by *Jaques Caillosse* and *Wolfgang Hoffmann-Riem*, investigating the limits of administrative law and administrative sciences in the wider sense in various national discourses in Europe. In a slightly different vein are the contributions of *Andrew Le Sueur* and *Sophie Boyron* which deal with informal dispute resolution and mediation. The authors analyse their influence in administrative law systems and their common roots by comparing the applications of these concepts by different legal systems.

Finally, two contributions outline the specificities of the German legal system. These are the discussion of procedural approaches in the contribution by *Athanasios Gromitsaris* also highlighting the importance of concepts of procedural justice such as participation as well as the brief contribution by *Wolfgang Schmidt-Aßmann* summarising various trends and factors of reform, highlighting constitutionalisation as central factor. All authors in these parts seem to agree that it is not sufficient to analyse the 'general part' of administrative law as such without looking at certain policy areas for reference. The largely empirical study by *Yonghee Tina Chang* and *Lindsay Sirton* on the amount of policy oriented approaches in one single journal, the law journal *Public Law*, is an interesting spot-light on the type of reference areas which are studied in order to gather an understanding of administrative law. This point should not be lightly dismissed as an irrelevant detail. It seems to me that much of the separation and misunderstandings between the small but growing group of scholars of European administrative law, on one hand, and the large group of scholars of national administrative law, which only rarely work in a comparative approach (with the laudable exceptions *inter alia* of the authors of this book) on the other hand, stem from the fact that both groups often use different reference policy areas to conduct

their studies. National administrative law often studies matters such as the law of the police, of local authorities, of civil service and planning law as reference matters. European administrative law originated studying matters such as competition law with state aid control and merger review. Only with the enlargement of Community competencies into areas such as environmental law, immigration, food safety and medical products, planning law as well as banking, finance and insurance regulation have the two areas become visibly intertwined. The academic perception of these facts however, as always, lags several years behind. The reference areas studied for the general understanding of administrative law seem to play an important part in this separation.

In my view, one of the key contributions to the book highlighting the essential change of organisation of public bodies in the process of Europeanisation is the chapter by *Jens-Peter Schneider*. His key-thesis is that in some policy areas a 'joint European administration' in the sense of a '*Europäische Verbundverwaltung*' has emerged. This observation is based on a careful analysis of the changing relation between European and national administrations. It is deduced from various non-traditional reference areas and from a careful review of the literature. His analysis joins the findings of a growing body of scholars arguing that the traditional dualistic understanding of direct and indirect administration linked to separate levels of jurisdiction – the Member States and the EU/EC – is no longer an apt description of the reality. Some of the most important challenges for modern administrative law in Europe arise from this finding. They show that it is necessary to develop the understanding of these changes to ensure accountability and the protection of individual rights in the networks of administrations. The final chapter referring to this debate and highlighting the reality of the highly integrated nature of legal systems in the EU is thus an important reminder that given the developments of European integration in the past few decades, we can no longer pretend to be talking of administrative law in EU Member States as isolated legal systems.

All in all, this book is a *tour d'horizon* of the factors influencing the modern perception and creation of administrative law. Its comparative review is thereby as essential a foundation as a profound understanding of the factors both of the transformation of public law in the different EU Member States as well as of European integration itself. *Ruffert* has assembled a very interesting group of thinkers redrawing for a broader audience the relevant debates in various legal systems on administrative law and why that is so in the context of the developments of the past decades. The understanding of the intellectual approaches of the book gives ample food for thought about the future of administrative law in Europe.

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