
Europeanization of Law in Poland and Ensuring Information Security as a Task of Public Administration

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Anna Gołębiowska¹

Abstract:

Purpose: The aim of this article is to describe the important determinants the process of Europeanization of law in Poland and information security as a task of public of administration.

Design/Methodology/Approach: The main methodology was based on the analysis of the results of scientific research and a synthetic description of the key conclusions draw from the review of the literature describing various aspects of the analyzed issue concerning the Europeanization of law and information security. Administrative law organizational structures were indicated along with the functional rules as well as methods and legal forms of operation. The approach of the community law to the provisions of the Constitution of Poland was noted. The considerations related to the Europeanization have led to the definition of the „European Administrative Space”, as a model for public administration aimed at achieving common and similar administrative solutions. Furthermore, the impact of the community law on the behaviour of office clerks has been presented as well as their attitude to the administration clients. Due to this, the European Code of Good Administration Behaviour (ECGAB) has been subject to analysis.

Findings: The article diagnoses the key determinants of Europeanization of law in Poland and information security as a task of public of administration. The working hypothesis refers to the assumption that current Polish law regulations highlighting the importance information security and other legal acts enable the whole system to work efficiently. Moreover, good implementation of the aforementioned regulations are to be notices as an important part Europeanization of law.

Practical Implications: In order to further improve Polish law, should be continued on the implementation of EU law in Poland. Therefore, it is necessary to constantly research and analyze legal provisions, taking into account the issues of information security in the activities of public administration.

Originality/Value: For the purposes of this article, a multifaceted, synthetic and critical analysis of data available in the source literature was carried out. The proposed solutions are to contribute to ensuring information security on the part of public administration.

Keywords: Information security, security, Europeanization, administrative law, community law, public administration, electronic document.

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¹The Main School if Fire Service, Institute of Internal Security, Warsaw,
ORCID ID: 0000-0003-0478-5047 agolebiowska@sgsp.edu.pl;

1. Introduction

In order to understand the relation between the information security in Poland and process of Europeanization of legal regulations in field of administration it is important to discuss many aspects. Therefore, the considerations on this topic should begin with explaining different definitions of Europeanization as well as the impact of the community law on administrative institutions, its organizational structures, operational principles, methods and legal forms of operation. Besides, when formulating conclusions, it will be important to underline the prevalence of the community law and to observe the attitude of this law to the provisions of the *Constitution of Poland* from 1997 (Journal of Laws No. 78, item 483).

Therefore, it will be necessary to define the „European Administrative Space”, as a model of public administration aimed at achieving common and similar administrative solutions. Furthermore, the impact of the community law on the behaviour of office clerks has been presented as well as their attitude to the administration clients. Considering the issue of Europeanization with regard to the Polish administrative law and public administration, it seem legitimate that reference should be made to the European Code of Good Administration Behaviour.

However profound, the Europeanization of legal regulations in Poland did not assure the sufficient level of information security and this has to be addressed in the future as the results of the report by Supreme Audit Office.

2. Origin and Notion of Administration

The shape and development of administration was influenced by systemic changes occurring from the Middle Ages, through the period of absolute power, until the times of bourgeoisie revolutions transforming subjects into citizens. As a result, also legal norms were subject to changes and ultimately, they gained bilaterally mandatory character, which means they were not only binding for the citizens (formerly subjects), but also for the administrative apparatus. Due to this fact, generally understood administration had to start operating within the scope of legal provisions and on the basis of them (Gołębiowska, 2019).

Contemporary public administration is the executive body in a state as well as organizing activity taken up in public interest on the basis of law and within its boundaries. Administration does not have any legal definition, nor can one present a single, uniform and exhaustive doctrinal definition thereof (Gołębiowska and Zientarski, 2019). It follows from the difficulties cause i.a., by an expanded system of subjects performing public duties and by an increasing substantial scope of the tasks performed. Due to this fact, presenting the problems related to the Europeanization of administrative law and public administration in

Poland is not easy and makes it necessary for us to indicate basic directions of this phenomenon (Gołębiowska, 2019).

Nevertheless, this perspective is not sufficient to understand Europeanization with reference to Poland, as Europeanization of the Polish legal order is related to international obligations which follow from Polish participation in the Council of Europe and in other organizations, as well as from the fact of ratifying certain conventions, especially the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4th November 1950 (Journal of Laws, No 61, item 284, as amended). This means that Polish law is influenced not only by the regulations of the community law, but also by the norms included in the acts of various organizations and conventions (Gołębiowska, 2019).

With regard to Poland, Europeanization constitutes a process of systematic impact of the European law, including the treaty law and the European Union law, on the shape of the Polish administrative and legal order. It means that this process comprises the inclusion of the European norms and rules in the Polish administrative law, as well as respecting European standards and models when creating national legal solutions, at the same time considering the distinctness of relevant local conditions (Gołębiowska, 2019).

3. Right to Good Administration, Code of Good Administration and European Code of Good Administrative Behaviour

The considerations related to public administration in the period of Europeanization lead us to the right to good administration, guaranteed in the European Union Charter of Fundamental Rights (Gołębiowska, 2015). The Court of Justice of the European Union referred to this right for the first time in 1969 in the case *Stauder vs Ulm*, but did not present its definition at that time (Gołębiowska, 2015). The verdict listed certain elements of this right, which were then repeated in next verdicts with reference to, examining cases within a reasonable time, fairness and impartiality, effective and efficient administration functioning, obligation to make decisions on the basis of all information collected with regard to a particular issue, legalism, each person's right to present a case personally, before a measure is applied that could have adverse effect on his/her situation and a right to claim damages for unlawful or inexpedient decision.

These features were expressed in the European Union Charter of Fundamental Rights adopted in Nice in 2000, which defines the right to good administration in art.41 (Official Journal of the EU C 303/1; Gołębiowska and Zientarski, 2019).

This regulation has become an inspiration to create the European Code of Good Administration Behaviour (Classen, 1998; Nehl, 1999; Świątkiewicz, 2007; Gołębiowska and Zientarski, 2019). "Good administration" points to effective

functioning of administration bodies. This means administrative actions consistent with the law and behaviour of the clerks that may be deemed impartial, objective, not subject to any political influence or particular interests. The „right to good administration” defined subjective right of an individual to demand particular powers and behaviour from the clerks. European Parliament passed the Code of Good Administration (Niewiadomski, 2004; Gołębiowska, 2015) on 06.09.2001 as recommended guideline to be used in EU bodies and institutions.

The Code of Good Administration includes general rules of good administrative practice applicable to the whole context related to the contact of institutions and their administration with an individual. Particular provisions indicate the need to observe, i.a., the following principles (Art. 2-10 of the Code of Good Administration):

- rule of law (art. 2 of the Code of Good Administration – regulation in this respects longer than Polish counterpart, art. 6 of the code of administrative proceedings and art. 7 of the *Constitution of Poland*);
- equality (art. 3 of the Code of Good Administration – the code of administrative proceedings does not directly formulate the order for equal treatment, but in this respect, art. 32 para. 1 of the *Constitution of Poland* is applicable);
- impartiality (art. 4 of the Code of Good Administration – this rule is not expressed directly in the code of administrative proceedings, but the order of impartial action of public administration and its employees follows from the principle of objective truth, i.e. from art. 7 *in medio* of the code of administrative proceedings and from the principle of increasing the trust in public authorities, i.e. art. 8 of the code of administrative proceedings);
- proportionality (art. 5 of the Code of Good Administration – order to act in accordance with the proportionality principle must be associated with art. 31 para. 3 of the Constitution of Poland, which indicates that: „Limitations regarding the use of constitutional rights and freedoms may be defined only in an act and only when necessary in a democratic state for its security or public order, or for environment protection, for safeguarding public health and morality or the freedom and rights of other people. These limitations must not infringe upon the essence of freedoms and rights”);
- legal certainty (art. 6 of the Code of Good Administration – this regulation entails the protection of granted rights to final legal decisions and the possibility of introducing interim solutions. In the Polish administrative law, the principle of durable decision is mandatory, which in extraordinary cases allows to remove the final decision from the legal transactions. this rule is based on art. 2 of the *Constitution of Poland* and on art. 8 of the code of administrative proceedings);
- taking actions in appropriate time (art. 7 of the Code of Good Administration – in the Polish law concerning administrative proceeding, the order to act expediently was regulated in art. 12 of the code of administrative proceedings, whereas the guarantee of its enforcement are the

instruments used in administrative proceedings, such as art. 37 of the code of administrative proceedings and complaint to the administrative court about inaction;

- transparency (art. 10 of the Code of Good Administration – this order is in the Polish law regulated with art. 61 of the *Constitution of Poland* and the provisions of the act of 6th September 2001 on access to information (Journal of Laws no. 112, item 1198 as amended).

The provisions of the Code of Good Administration include the principles reflected in constitutional provisions and in the Polish code of administrative proceedings (Gołębiowska and Zientarski, 2019; Groussot, 2006), which may be exemplified by the aforementioned principle of the rule of law following from art. 7 of the *Constitution of Poland* and from art. 6 of the code of administrative proceedings. Nevertheless, it must be noted that the code of administrative proceedings regulates the proceedings which end in an individual administrative decision, leaving aside all the other legal forms of administrative activity. On the other hand, the European Code of Good Administration Behaviour is applicable to all forms of business attended to by community bodies and institutions, including also civil law issues.

In the Polish doctrine it is indicated that art. 8 of the code of administrative proceedings formulates the principle of increasing the citizens' trust in state institutions. The analysis of regulations included in the European *soft-law* points out the provisions of the European Code of Good Administration Behaviour. Moreover, the provision clearly exposes service-providing function of administration and officials (Gołębiowska, 2015; Tridimas, 2006; Gołębiowska and Zientarski, 2019). EU requirements are taken into account in the act *on access to public information* (Journal of Laws no. 112, item 1198 as amended), but such access is not possible in each single office, because lack of information is often justified with security concerns, while the question why people need such information is rather frequent.

4. Notion of Europeanization

The discussion of the Europeanization of law, especially administrative law and public administration, may be taken up in various dimensions. It is important to indicate the Europeanization process which is taking place within the scope of European integration, i.e. as a result of the activity of the EU and Community, but also under the auspices of the Council of Europe. Statute of the Council of Europe adopted in London on 5th May 1949 (Journal of Laws of 1994, No. 118, item 565).

We can, therefore, say that in its broadest meaning, Europeanization is treated as looking for some universal system of values, characteristic of the European culture and importing legal institutions created on the Western European continent to Poland. Furthermore, Europeanization may be defined as the interaction, direct or indirect, impacting the national legal order with regard to certain values, as well as certain legal institutions, solutions and structures,

shaped in and originating from the European democratic legacy, especially the EU (Skorkova 2006). Due to this fact, Europeanization understood as described above constitutes a dynamic notion, indicating a process and continuous development (Gołębiowska, 2019).

With regard to Poland, Europeanization constitutes a process of systematic impact of the European law, including the treaty law and the EU law, on the shape of the Polish administrative and legal order. It means that this process comprises the inclusion of the European norms and rules in the Polish administrative law, as well as respecting European standards and models when creating national legal solutions, at the same time considering the distinctness of relevant local conditions (Gołębiowska, 2015).

5. Europeanization of the Polish Law

The impact of the community legal order in the process of Europeanization of the Polish law is closely related to the notion of applying the sources of such law, according to the Polish legal order, especially in the light of the provisions included in the *Constitution of Poland* (1997). The rule of prevalence of the community law over internal law is important, in accordance to the *Constitution of Poland* (Gołębiowska, 2019). The process of Europeanization refers to the total administrative law but is more visible in substantive law, constitutional, substantive and procedural law (Batalli and Fejzullahu, 2018; Grindle, 2004; Bovaird and Loffler, 2003).

Nevertheless, the standardization of legal order is visible especially in the area of substantive laws (Gołębiowska, 2019). Substantive legal norms define mutual relationships of the public administration body and the individual. Furthermore, they indicate the individual's rights and obligations and define the scope extent to which the authorities may intervene with the situation of an individual and its position with regard to a public body and they indicate the possibilities to address the authorities with specific claims and demands.

In many areas Europeanization visibly determines changes directed towards the expansion of norms following from new issues emerging in the areas of social and public life. They require international cooperation, i.e., in the area of energy security, safeguarding against terrorism or combating drugs. This is reflected in relevant legal regulations, principles and administrative operational modes, which are becoming a part of legal order in specific countries.

The aforementioned aspects of Europeanization comprise both the Europeanization of administrative law and the Europeanization of public administration (Slabu, 2017; Fukuyama, 2014). One can therefore say that affecting the content and application of administrative legal norms, European law impacts the administration „Europeanizing” it, i.e., leading to the standardization of organizational structures,

operational principles, links in public administration, methods and legal forms of action (Gołębiowska, 2019). It follows that common operational principles have resulted in certain similarities between public administrations of the member states and in the creation of the „European Administrative Space” that is used to denote the model of public administration, directed towards achieving common or similar administrative solutions.

Furthermore, the connections between the administrations of member states and European institutions are expanded. Effective administration regarding the applications of the European law requires that member states should introduce such modifications of their internal administrative structures as are necessary to introduce effectively the decisions of European institutions. Membership in the EU affects the relationships between central and regional authorities (Gołębiowska and Zientarski, 2019).

It should be noted that the EU may not interfere with the structure of public administration in member states. In some areas, secondary community law may affect the organizational structure of the administration in these states, as it may e.g. oblige them to constitute certain administrative bodies in order to realise tasks following from community regulations (Gołębiowska, 2019). The fact that the community law imposes the mandatory principle of institutional autonomy means that member states themselves choose constitutional system and decide on the structure of authorities.

Although the provisions of the treaties do not directly impose procedural administrative solutions, their shape must consider fundamental legal and procedural rules which constitute the basis for European integration and ensure the ability to realise Community tasks, as well as the basis for comparing and ensuring the system of state responsibility for how public administration bodies and institutions (government and local government) enforce and observe European legal norms (Gołębiowska and Zientarski, 2019). The latter requirement follows from the subsidiarity principle mandatory in the relationships between Community bodies and member states. It is observed that it's necessary to distinguish between Europeanization related to the content of the EU law (Europeanization of the law) from the participation of national administration in the EU decision-making process, from cooperation related to the enforcement of Community policies and from the verdicts issued by the Court of Justice of the EU.

6. Ensuring Information Security

Public administration entities that perform tasks in relation to ensuring information security include:

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- state bodies, local government bodies and their subordinate or supervised organizational units;
 - courts and tribunals;
 - state control bodies;
 - National Bank of Poland.

Information security should be ensured at every stage of the creation and processing of information. In public administration, pursuant to art. 17 paragraph 1 of the Administrative Law Code, the principle of writing applies, therefore the issue of information security should be addressed in the office manual regulating the method of creating and circulating paper and electronic documentation. Due to the obligation to archive the documentation and store it in the period specified by the uniform material list of files, the administration should ensure the security of the information contained in the documents created throughout the period of their storage.

Information security is an element of national security. And in this context, the task of ensuring information security begins at the stage of the legislative initiative. Pursuant to the provision of the Constitution of the Republic of Poland, the president is the guardian of state security (art. 126 paragraph 2). It influences the provision of information security through a legislative initiative (art. 144 paragraph 3 point 4) and by signing or refusing to sign an act (art. 144 paragraph 3 point 6). Thanks to these powers, the president can regulate the content of regulations related to information security.

The obligation to ensure the security of information applies to all legally protected information. In Polish law, it is a wide range of professional, business and other secrets. As part of the tasks of public administration, protection covers, among others:

- notarial secret (Act of February 14, 1991 – Law on notaries, Journal of Laws of 1991, No 22, item 91, as amended);
- medical secrecy (Act of December 5, 1996 on the medical profession, Journal of Laws 1997, No 28, item 152, as amended);
- the secret of the patent attorney (Act of April 11, 2002 on patent attorneys, Journal of Laws 2001, No 49, item 509, as amended);
- secrets of judges (Act of July 27, 2001 – Law on the System of Common Courts, Journal of Laws 2001, No 31, item 137, as amended);
- prosecutor's secret (Act of June 20, 1985 on the prosecutor's office, Journal of Laws 1985, No 31, item 138, as amended);
- the secret of the labor inspector (Act of April 13, 2007 on the National Labor Inspectorate, Journal of Laws 2007, No 89, item 589, as amended);

- secrecy of a local government employee (Act of November 21, 2008 on local government employees, Journal of Laws of 2008, No 223, item 1458, as amended);
- secret a state official (Act of 16 September 1982 on employees of state offices, Journal of Laws of 1982, No 31, item 214, as amended);
- the secret of the employer/employee (Act of June 26, 1974, Labor Code, Journal of Laws of 1974, No24, item141, as amended);
- customs secret (Act of August 27, 2009, on the Customs Service, Journal of Laws of 2009, No 168, item 1323, as amended);
- secrecy of an employee of state control (Act of December 23, 1994 on the Supreme Chamber of Control, Journal of Laws of 1995, No 13, item 59, as amended);
- fiscal secrecy (Act of August 29, 1997 – Tax Ordinance, Journal of Laws of 1997, No 137, item 926, as amended)/

The indicated legal acts do not result in sanctions for failure to comply with the obligation to ensure the security of a specific type of secrecy (Gołębiowska, 2019). The sanction is contained in the legal provision of art. 266 paragraph 1 and 2 of the Penal Code, according to which “The prosecution of breach of professional/functional secrecy from section 1 takes place only at the request of the aggrieved party”. The specificity of the operation of public administration in Poland requires a broader view of the task of ensuring information security (Gołębiowska, 2019). The report of the Supreme Audit Office indicate numerous shortcomings on the part of public administration in ensuring information security.

A large number of legal acts in this area and various supervisory authorities actually complicate the performance of activities in this area. The analysis of some executive acts leads to the conclusion that they were issued with a significant delay in relation to the act, which causes a legal loophole and thus exposes information to threats. An example of such an act is the regulation of the Council of Ministers of May 29, 2012 on physical security measures used to secure classified information (Gołębiowska, 2019).

Information security is viewed unilaterally through the prism of the protection of classified information or personal data, or through ICT security. The greatest emphasis in the field of ensuring information security is placed on the protection of information stored in electronic form, while despite intensive computerization, it is the traditional document that is the most common basis for decisions made.

In the model archival and chancellery instruction, the electronic document is the main focus. This means that a traditional document is not subject to special protection, which may pose a threat to the information contained therein (Gołębiowska and Zientarski, 2019). The Act on the National Archival Resource

and Archives penalizes the destruction of documentation constituting archival materials (Gołębiowska, 2015).

Therefore, the question arises whether the loss of information due to the failure to transfer information from the old carrier to then new one can be considered destruction? Certainly, many state authorities and institutions are involved in ensuring information security. But due to the division of competences between them, only the correct operation of each of these institutions separately guarantees full information security.

7. Conclusions

As presented in this paper, the Europeanization of law in Poland is easy to observe and has strong influence upon Polish public administration and information security. The approach of the community law to the provisions of the Constitution of Poland are noted. The considerations related to the Europeanization resulted in the definition of the “European Administrative Space”. The European Code of Good Administration Behaviour has been subject to analysis.

Due to the brief nature of this paper the author decided to address Europeanization of law connecting information security, although the overall effect of Europeanization can be observed in many other areas related to security. The conclusion is that, despite of the fact the Europeanization of both administrative law and information security has been progressing in Poland is still not at the desired level therefore, further improvement is needed.

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