

**Tomasz Hoffmann**

ORCID: 0000-0001-8423-8670

Państwowa Uczelnia Zawodowa im. Ignacego Mościckiego

## **Selected aspects of the Europeanization of public administration in Poland**

### **Abstract**

The main research purpose of the following article is to indicate selected models and methods of the Europeanisation of public administration, as well as their legal and social aspects. As a result of the research material selection, the article also attempts to indicate how certain conditions have influenced the processes of Europeanization. The political and legal context of preparing public administration (both government and local) for effective participation in the European Union public policies was also highlighted.

**Keywords:** Europeanization, Europeanization of public administration, European Union

### **Introduction**

The fall of the Communist authorities, the collapse of the bipolar international order, and the progressive disintegration of the USSR established a qualitatively new situation for Poland and the other states of Central and Eastern Europe. The prevailing internal and international conditions presented new opportunities for Poland, particularly concerning the exercise of sovereign rights. The profound system changes were initiated with the establishment of Tadeusz Mazowiecki's government. Such changes radically altered the direction of Polish foreign policy. They were noticed and supported by the countries of the European Economic Community rather quickly. The practical manifestation of such changes was the launch of the PHARE financial assistance program for Poland and Hungary, the inclusion of Poland in the Generalized System of Preferences, and the suspension of quantitative restrictions imposed at that time on imports from Poland, as well as other Member States of the Council for Mutual Economic Assistance (CMEA)<sup>1</sup>.

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<sup>1</sup> J. Barcz, E. Kawecka-Wyrzykowska, K. Michałowska-Gorywoda, *Integracja Europejska*, Warszawa 1997, p. 403.

At the beginning of the 1990s Poland was experiencing a serious economic and social crisis, being a legacy of the past system and the consequence of the abruptness of reforms. At the time, it was assumed that the strategic objective of Polish foreign policy would be integration with the European Communities, the European Union, and joining the North Atlantic Alliance. Essentially, no one realized when it could happen. Some politicians believed Poland might become a member of the EC/EU in 2000, while others expected it to happen in the 20th century<sup>2</sup>.

However, prior to accession, hundreds of legislative acts, economic and political reforms were required in order to join the European Union. The EC was also obliged to open up to Central and Eastern Europe, including Poland. Many politicians and experts were involved in the process along with efforts to build the public support necessary for the ultimate objective which was membership. Gradually, institutions were established, new documents were formulated, and relevant agreements were signed<sup>3</sup>.

Moreover, the attempts were also made to modernize legal institutions, and enforce standards of citizens' treatment by the administration, etc. Thus, it can be concluded that in the context of preparations for the EU membership, public administration underwent fundamental changes. The ongoing transformations formed a combination of activities adjusting the administration to changes occurring in its environment, and conscious, intentional modernization activity resulting from certain doctrinal assumptions being the basis of public authorities' activity<sup>4</sup>.

All the main principles followed were confirmed in the Charter of Fundamental Rights, adopted in 2000 at the Nice Summit. Finally, one year later, the principles such as: the rule of law, non-discrimination, the proportionality between the action and the objectives, the prohibition of abuse of powers, impartiality, and independence were confirmed in the European Code of Good Administrative Behaviour<sup>5</sup>. In 2002, the European Commission additionally issued a Communication on Regulatory Impact Assessment. The adopted principles are as follows: a policy of better application of the European Union law, including proportionality, subsidiarity, transparency, accountability, as well as accessibility and simplicity. The main research objective of the following

<sup>2</sup> S. Biernat, *Europejskie prawo administracyjne i europeizacja krajowego prawa administracyjnego*, [in:] *Studia Prawno-Europejskie (Studies on European Law)*, eds. M. Seweryński, Z. Hajna, vol. 6, Łódź 2002, pp. 72-111.

<sup>3</sup> J. Barcz, E. Kawecka-Wyrzykowska, K. Michałowska-Gorywoda, op. cit., p. 405.

<sup>4</sup> G. Rydlewski, *Modernizacja administracji. Studium z polityk administracyjnych w Polsce*, Warszawa 2015, p. 11.

<sup>5</sup> A. Jackiewicz, *Prawo do dobrej administracji w świetle Karty Praw Podstawowych*, „Państwo i Prawo” 2003, no. 7, p. 55; J. Świątkowski, *Europejski Kodeks Administracji*, Warszawa 2002.

article constitutes an attempt to conduct a theoretical and empirical analysis of the European Union's impact on the process of public administration Europeanization.

Thus, the main research problem consists in indicating selected models and methods of public administration Europeanization, as well as introducing its legal and social aspects. The general research problems are:

- how, broadly understood, historical, cultural, environmental, social, and geographical conditions have influenced the Europeanisation process in Poland,
- how to identify some specific and recurrent sets of causes of the process.

The application of the process tracing method with<sup>6</sup> institutional and legal analysis seems to be methodologically justified. The triangulation of methods, on the one hand, is dictated by the process character of Europeanization, whereas on the other, by the gradual and changeable specificity of the analyzed process, hence, in such an approach its application is advisable.

## **Operationalization of the concept and meaning of the term Europeanization**

In the discussions concerning the phenomenon of Europeanization, the taxonomy of the conceptual apparatus is not uniform, its systematics, or sometimes its lack leaves a lot to be desired<sup>7</sup>. The analysis of scientific studies devoted to the Europeanization process allows us to assume that it is an evolving process involving a complex interaction of variables, resulting in diverse, interdependent, and sometimes contradictory effects.

Such a general definition of the Europeanization allows for its application to many scientific disciplines<sup>8</sup>. T. Flockhart defines it on a relatively general level, claiming that it is a dynamic, multiform diffusion process of European ideas, procedures, and customs. The process has strong sociological connotations, reflected by the reference in the draft Constitutional Treaty of the European Union to the beginnings of European civilization, its cultural, religious and civilizational as well as humanistic heritage of the Roman Empire<sup>9</sup>.

<sup>6</sup> Cf. J. Ruskowski, *Europeizacja. Analiza oddziaływania Unii Europejskiej*, Warszawa 2019, pp. 18-19.

<sup>7</sup> See. K. Holzinger, F. Schimmelfenning, *Differentiated Integration In The European Union: Many Concept, Sparse Theory. Few Data*, „Journal of European Policy” 2012, vol. 19, p. 292.

<sup>8</sup> K. Dyson, *Introduction: EMU as integration, Europeanization and Convergence*, in: *European states and euro. Europeanization, Variation and Convergence*, ed. K. Dyson, Oxford – New York 2002, pp. 2-3.

<sup>9</sup> T. Flockhart, *Europeanization or EU –ization? The transfer of European Norm across Time and Spaces*, „Journal of Common Market Studies” 2010, vol. 48, no. 4, pp. 788-789.

Some authors even provide a periodization of the Europeanization over the centuries, distinguishing five periods: the period of European self-realization before 1450, the period of Proto – Europeanization between 1450 and 1700, the period of Incipit Europeanization between 1700 and 1919, the period of Contemporary inward Europeanization after 1919 as well as the period of Contemporary outward Europeanization after 1945<sup>10</sup>.

**Table 1.** Historical stages of Europeanization

Stages Factors	Before 1450 European self-realization	1450-1700 Period of Proto-Europeanization	1700-1914 Incipit Europeanization	Since 1914 Contemporary inward Europeanization	Since 1945 Contemporary Outward Europeanization
Normative and ideological structure	Unity of Christianity	Civilization, Christianity	Rationality European rationality based on administrative and organizational principles	Wilsonianism, anti-imperialism pro-nationalism	Normative Europe promoting its set of norms
Ideological agents	Crusaders, merchants, invading Muslims and Tartars	Merchants, warriors, Jewish and Muslim thinkers	Colonial Administrators, missionaries, explorers	American policymakers and their representatives in various institutions, subsequently, also European policymakers	European policymakers in European institutions and international organizations
Ideological process	Diffusion of resources, adaptation, assimilation	Diffusion of resources, adaptation, assimilation	Colonialism	Socialization of the state, institution building	Socialization of the state, Institutional expansion and integration, learning
Remaining relevant historical and social factors	Barbarians, Saracens, Tartars	Turkish people, uncivilized peoples	Barbarians, colonial peoples	Fascism and the past of Europe, Sovietism	Europe's "past", violent nationalism, Sovietism, militant Islamism
Significant impact areas	Rome, Christian Church	Superior and the boundless West	Civilized world		Member States, liberal democracies

Source: K. Wach, *Europeizacja małych i średnich przedsiębiorstw*, Warszawa 2012, as cited in T. Flockhart, *Europeanization or EU –ization? The transfer of European Norm across Time and Spaces*, Journal of Common Market Studies, vol. 48, no. 4/2010, pp. 788-789.

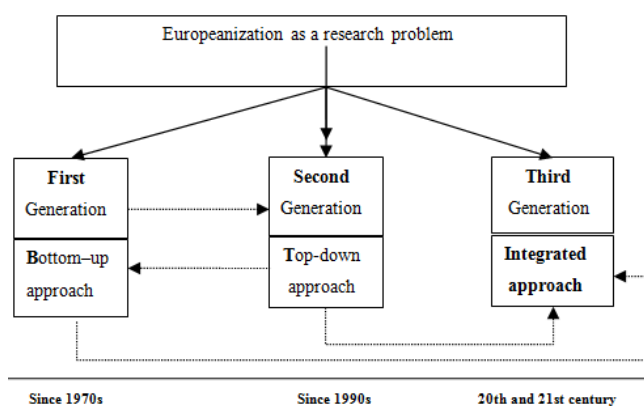
The contemporary concept of Europeanization increasingly refers to the European Union itself rather than to Europe or European civilization. Thus, one may risk a thesis claiming that Europeanization is a kind of distortion of the term's etymology, hence several authors postulate the necessity of distinguishing it from other concepts of the Europeanization.

<sup>10</sup> K. Wach, *Europeizacja małych i średnich przedsiębiorstw*, Warszawa 2012, p. 145.

R. Landrech treats Europeanization as “an incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making”<sup>11</sup>. According to philosophical systematics, three main areas of Europeanization research can be distinguished: ontology, epistemology and methodology.

The ontology of Europeanization studies the structure and processes of Europeanization, while the epistemology of Europeanization examines the ways of cognition of the phenomenon and analyzes the research object and its relations between theory and practice. The methodology of Europeanization is the least developed. It provides systematic procedures for studying the Europeanization process and research improvement instruments in the abovementioned field<sup>12</sup>.

By analyzing the available literature, both Polish and foreign, one can conclude that three basic research approaches can be applied to the process of Europeanization:



**Fig. 1.** Europeanization as a research problem

Source: K. Wach, *Europeizacja małych i średnich przedsiębiorstw*, Warszawa 2012, p. 151.

The first is the bottom-up approach, which began in the 1970s<sup>13</sup>. These are the means by which the preferences of individual grassroots groups are taken into account at the level of the European Union to influence the development

<sup>11</sup> See R. Landrech, *Europeanization and Political Parties. Towards a Framework for analysis*, „Party Politics”, vol. 8, no. 4/ 1999, p. 71.

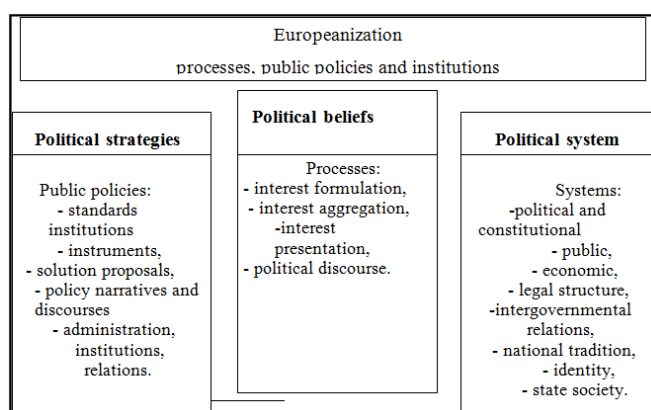
<sup>12</sup> S. Bulmer, C. Radaelli, *The Europeanisation of National Policy? Queen’s Papers on Europeanisation*, „Public Administration 80”, no. 4/2005, pp. 23-25; H. Grabbe, *How does Europeanization affect CEE governance? Conditionality, diffusion and diversity*, „Journal of European Public Policy 8” 2005, no. 4, pp. 1013-1031.

<sup>13</sup> Occasionally referred to as the democratic approach.

of the political structures<sup>14</sup>. Such an approach is known as inductive or gradual, with a sequential progression pattern from the state through the international organization to the center creation<sup>15</sup>.

The second approach treats Europeanization as an exploratory factor for changes occurring at the level of the Member States. According to such an approach, the European Union is perceived as a separate political system<sup>16</sup>.

In the present approach, there is a shift of state sovereignty from a decentralized system where the main role belongs to the nation states influencing the European Union in bilateral and multilateral relations, towards a supra and subnational community that has achieved a certain organizational capacity and self-regulation, involving the institutionalization of the decision-making system<sup>17</sup>. One important and simultaneously a significant effect of Europeanization is the structural change<sup>18</sup> of national politics in three dimensions: national political beliefs, national political strategy, and national political system<sup>19</sup>.



**Fig. 2.** National effects of top-down Europeanization

Source: K. Wach, *Europeizacja małych i średnich przedsiębiorstw*, Warszawa 2012, p. 153.

<sup>14</sup> See K. E., Howell, *Developing Conceptualizing of Europeanization; A study of Financial Services*, „Politics” 2004, vol. 24, no. 1, p. 21; K. E., Howell, *Europeanization, Policy Transfer, Convergence and Lesson-Drawing; Case Studies of UK and German Financial Services Regulation*, „Journal of Banking Regulation”, vol. 6, no. 1, pp. 52-53.

<sup>15</sup> See J. Caporaso, *The Three World of Regional Theory*, in: *Europeanization New Research Agendas*, P. Graziano and M.P. Vink, New York 2007, pp. 24-26.

<sup>16</sup> See J. Czapotowicz, *Suverenność państwa w Unii Europejskiej*, [in:] *Administracja publiczna. Wyzwania w dobie integracji europejskiej*, ed. J. Czapotowicz, Warszawa 2008, p. 5.

<sup>17</sup> B. Nowak, R. Riedel, *Europeizacja. Teorie, mechanizmy, wyzwania, agenda badawcza*, [in:] *Polska i Europa Środkowa. Demokracja. Konsolidacja, Europeizacja*, eds. B. Nowak, R. Riedel, Lublin 2010, p. 214.

<sup>18</sup> J. G. March, J. P. Olsen, *Instytucje. Organizacyjne podstawy polityki*, Warszawa 2005, pp. 206-208.

<sup>19</sup> Cf. M. Cowles, J. Caporaso, T. Risse, *Europeanization and change. Transforming Europe*, Ithaca 2001, pp. 45-49; R. Wong, *The Europeanization of Foreign Policy* [in:] *International Relations and the European Union*, eds. H. Christopher, M. Smith, Oxford 2005, pp. 134, 145-146.

The current third wave of research on Europeanization represents an attempt at a holistic conception, both descriptive and explicative, assuming the interrelation of these processes and, moreover, combining the previous bottom-up and top-down approaches. In the doctrine undertaking this research stream, the following concept appears: “*an ever-spinning multilevel spiral of bottom-up and top-down processes of interaction between the EU and national levels of governance*”<sup>20</sup>.

At present, the instruments of Europeanization include hard instruments, namely the implementation of legislation, as well as soft instruments, such as the open method of coordination, benchmarking, good practices, and the exchange of professionals. Such approaches result in the effect of imitation<sup>21</sup>, which is considered significant in the Europeanization process<sup>22</sup>.

The Europeanization process may be observed in many dimensions of social life. Thus, one can observe the Europeanization of law, administration, education, research, lifestyle, state, and language. Of course, the catalog is not complete.

A kind of organization of the Europeanization influence areas allows us to assume that the Europeanization has many dimensions, including economic and non-economic aspects. Non-economic Europeanization describes changes in the following dimensions: geographical, sociological, educational-research, legal, institutional-organizational, political, and geopolitical<sup>23</sup>.

The Europeanization in legal terms appears as a convergence of national law with the EU law, resulting on the one hand in the transposition of the EU law into the national legal order, and on the other hand in the direct applicability of the EU law in the EU Member States<sup>24</sup>. However, at the administrative level, Europeanization follows a certain dichotomy. First of all, it focuses on the development of EU institutions<sup>25</sup>, whereas, in turn, it involves the shaping of common tasks, processes, and quality standards<sup>26</sup> in the administration of the Member States, common to the entire European Union<sup>27</sup>.

<sup>20</sup> See B. Nowak, R. Riedel, *Europeizacja. Teorie, mechanizmy, wyzwania, agenda badawcza*, [in:] *Polska i Europa Środkowa. Demokryzacja. Konsolidacja. Europeizacja*, eds. B. Nowak, R. Riedel, Lublin 2010, p. 215; K. Wach, *Europeizacja małych i średnich przedsiębiorstw*, Warszawa 2012, p. 160.

<sup>21</sup> See: K. Waltz, *Teoria stosunków międzynarodowych*, Warszawa 2006.

<sup>22</sup> <http://aei.pitt.edu/1720/1/Howell>, pdf, [accessed on 12.12.2020].

<sup>23</sup> The Group of Lisbon, *Limits to Competition*, Cambridge-London 1995, p. 20, as cited in K. Wach, *Europeizacja małych i średnich przedsiębiorstw*, Warszawa 2012, p. 166.

<sup>24</sup> M.P. Maduro, *Editorial Note; Legal Education and the Europeanisation and Globalisation of Law*, „Croatian Yearbook of European Law & Policy” 2008, vol. 4, pp. 2-3.

<sup>25</sup> See: J. G. March, J. P. Olsen, *Instytucje. Organizacyjne podstawy polityki*, Warszawa 2005; J. P. Olsen, *The many faces of Europeanization*, „Journal Common Market Studies” 2002, vol. 40, no. 3, p. 925.

<sup>26</sup> For instance, increased service to petitioners from the other Member States and consular care for citizens of European Union Member States. See *Polityczne prawa*.

<sup>27</sup> G. Rydlewski, *Problemy europeizacji Administracji publicznej*, „Służba Cywilna” 2004, no. 9, p. 12.

## Europeanization of public administration

According to W. Wessel, and D. Rometsch, the institutional system of the European Union is open to national institutions and their active participation in the decision-making process. The national administrations of the Member States are thus oriented towards Brussels and interested in the processes occurring there. In such a context, one can refer to the Europeanization of national administrations<sup>28</sup>. In turn, the Polish administration has historical tendencies, remaining after the communist state. It involves many situations that cannot be adapted to the Polish administrative and legal system<sup>29</sup>. Europeanization has a great significance for the entire public administration, causing three effects:

- modernization of legal institutions,
- enforcement of certain standards of citizen's treatment by the administration,
- improvement and unification of citizen's status towards administration<sup>30</sup>.

Besides Europeanization tendencies, globalization affects changes in public administration and administrative law. It manifests itself in the implementation of the rule of law or democracy<sup>31</sup>. Europeanization enables adaptation to the standards prevailing in other EU Member States, and, therefore, it overlaps with globalization processes<sup>32</sup>. Numerous authors write about a rather complicated structure of connections between Europeanization and globalization<sup>33</sup>.

One may distinguish two opposite directions of thought in the discussion of the very concept of the public administration Europeanization. The first is determined by the expectations of creating in the national administration similar solutions to those operating in the European Union. In particular, it refers to the sphere of principles of operation, competencies, institutions, and personnel.

<sup>28</sup> W. Wessels, D. Rometsch, *Conclusion: European Union and national institutions*, [in:] *The European Union Member States. Towards Institutional Fusion?*, eds. W. Wessels, D. Rometsch, Manchester 1996, p. 351.

<sup>29</sup> S. Gajewski, *Kodeks postępowania administracyjnego. Nowe instytucje*, Warszawa 2017, p. 131; P. Izdebski, *Administracyjnoprawne środki ochrony konsumentów na rynku kapitałowym w ramach działalności Komisji Nadzoru Finansowego i Prezesa UOKiK*, Warszawa 2018; H. Nowicki, *Sankcje administracyjne*, p. 647; S. Biernat, *Europejskie prawo administracyjne i europeizacja krajowego prawa administracyjnego (zarys problematyki)*, [in:] *Studia Prawno-Europejskie*, vol. VI, Łódź 2002; Z. Janku, Z. Leoński, M. Szewczyk, M. Waligórski, K. Wojtczak, *Europeizacja polskiego prawa administracyjnego*, Wrocław 2005, p. 13; and also: M. Jaśkowska, *Europeizacja prawa administracyjnego*, „PiP” 1999, vol. 11.

<sup>30</sup> G. Krawiec, *Europejskie prawo administracyjne*, Warszawa 2009, p. 16.

<sup>31</sup> *Ibidem*. Cf. D. G. Milewski, *Standardy Rady Europy w zakresie demokracji lokalnej i ich znaczenie w polskim porządku prawnym*, Warszawa 2018.

<sup>32</sup> J. Blicharz, L. Zacharko, *Globalizacja i personalizacja administracji publicznej. Studium administracyjnoprawne*, Wrocław 2019, p. 65.

<sup>33</sup> M. P. Maduro, *Editorial Note: Legal Education and the Europeanisation and Globalisation of Law*, „Croatian Yearbook of European Law & Policy” 2008, vol. 4, p. 4.



Therefore, it is suggested that the administrations of the Member States should be unified to develop one universal model of public administration.

The second stream of thought focuses on the expectation of forming a convergent range of values regarded as fundamental in the national administration. Such an approach is problematic since individual Member States have different political systems and, consequently, various normative systems.

In light of this, the analysis of the Europeanization may be significant in the relationship analysis between the national administration and a certain general public administration model, based on the foundation of values and principles of the democratic state in the European policies implementation.

While analyzing the national administration standards, it should be stated that the Polish system of public administration complies with the European Union standards. First of all, it is based on fundamental values for the Community, such as democracy, human rights, the responsibility of the state and administration for its actions, acting on the principle and within the limits of the law, observance of binding international law, participation of local government in executive power processes. These standards have been implemented in the Polish administration system, similarly as a part of a control, supervision, and other administrative and legal areas.

As part of the standards, appropriate institutions have been established, including Government Plenipotentiary for Combating Financial Irregularities Detrimental to the Republic of Poland, management systems, appropriate application, decision-making, and control procedures in the day-to-day operation of the public administration<sup>34</sup>.

The second case of the Europeanization is the analysis of correlations occurring at the level of tasks performed by the national administration of individual EU Member States. The Polish public administration had, under the influence of the Europeanization tendencies, to master four fundamental spheres of influence:

- development of a coordinated and coherent national position and ability to present it,
- alignment of the national and EU legislation,
- consumption and absorption of EU funds,
- satisfying human resources requirements related to servicing of the European Union membership.

Since the European Union does not have one specific public administration model, the Member States, including Poland, had to introduce such solutions based on their legal culture and experience. The main goal was to make the Polish national administration effective.

<sup>34</sup> Such systems have been implemented at almost each level of public administration (local or government).

While analyzing the changes occurring in public administration, it can be pointed out that the main directions of modernization and development of Polish administration include: withdrawal from authoritative administration, the introduction of the system and structural changes, professionalization and improvement of public administration personnel quality, strengthening of transparency, reliability, impartiality, and responsibility of administration, the introduction of pro-innovative administration, as well as Europeanization tendencies, namely preparation of public administration to operate in the European administrative space. The introduction of solutions based on decentralization and deconcentration to the Polish administration became essential<sup>35</sup>.

Decentralization is nothing but a statutory, permanent, legally protected transfer of tasks, competencies, and resources to the bodies of decentralized public authority, which until now were equipped with the bodies of the central government. According to numerous researchers of the issue, decentralization is treated as the construction of relations between subjects of public law. It was raised to constitutional status, which manifested itself, along with the principle of subsidiarity by creating specific arrangements of tasks and competences, involving the power transfer from the top down<sup>36</sup>.

As K. Kokocińska points out, the public authority entities began to have numerous relationships, which required their normative ordering. In turn, their modeling contributed to ensuring the effectiveness and efficiency of performing public tasks<sup>37</sup>. Deconcentration, on the other hand, means delegating competencies and entrusting tasks of the central government to institutions and authorities representing it in such field<sup>38</sup>. Deconcentration means, on the one hand, a rationalization of the exercise of power, and on the other, the Europeanisation of the Polish legal order<sup>39</sup>.

<sup>35</sup> G. Rydlewski, *Modernizacja administracji. Studium z polityk administracyjnych w Polsce*, Warszawa 2015, pp. 141-240.

<sup>36</sup> Z. Zgud, *Zasada subsydiarności w prawie europejskim*, Kraków 1999; A. Szpor, *Państwo a subsydiarnosc jako zasada prawa w UE i w Polsce*, „Samorząd Terytorialny” 2001, no. 1-2, p. 20; Z. Cieślak, *Zagadnienia prawa europejskiego. Informacje na temat kontroli działań podejmowanych przez UE pod względem zgodności z zasadą subsydiarności*, „Zeszyty Prawnicze Biura Studiów i Ekspertyz” 2004, no. 3, p. 33; E. Popławska, *Zasada pomocniczości (subsidiarności)*, [in:] *Zasady podstawowe polskiej konstytucji*, ed. W. Sokolewicz, Warszawa 1998, p. 190.

<sup>37</sup> K. Kokocińska, *Decentralizacja jako ustrojowa zasada relacji pomiędzy organami władzy publicznej*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2016, vol. 2, pp. 27-29.

<sup>38</sup> L. Zacharko, M. Janik, *Europeizacja administracji publicznej (kilka refleksji)*, „Acta Universitatis Wratislaviensis”, *Prawo nr 3999*, Wrocław 2019, p. 207.

<sup>39</sup> Similarly: J. Szymanek, *Determinanty procesu zmiany konstytucji*, „Przegląd Legislacyjny” 2015, no. 3, pp. 9, 16-17.

Other fundamental elements determining the nature of the European Union Member States' political system, including the national public administration system, are the principles of democracy and the rule of law. They constitute values common to all Member States and fundamental values of the European Union.

The principle of democracy requires democratic legitimacy of public administration bodies<sup>40</sup>, while the principle of the rule of law means that the law democratically established by the state takes precedence over and binds those in power, defining the scope of their competences and providing citizens with a catalog of rights and freedoms together with guarantees of their observance<sup>41</sup>. The principle of respect for national identity, connected with the basic principles of the constitutional order of individual Member States, plays an equally important role<sup>42</sup>.

Member States respect and support each other in carrying out the tasks arising from the founding Treaties, which manifests in the principle of loyal cooperation and the effectiveness of European Union law. Therefore, such a principle requires the efficient Member States and, consequently, an efficient national administration. Finally, it is worth mentioning that a significant role is played by the principle of institutional autonomy, which consists in the fact that the Member States are free to shape their administrative structures for the purposes of implementing European Union law<sup>43</sup>. All the above-mentioned fundamental principles of the Community legal order influence the public administration system of the Member States. Moreover, they are important in the case of conducting European policy by the state or participation in the decision-making processes of the European Union.

The public administration faced some of the biggest challenges, as they required the creation of entirely new structures or decision-making procedures, which, in turn, were supposed to support national interests. The Europeanization of administration was also associated with the necessity to involve many entities and institutions responsible for implementing European policy at the national or regional level. At the central level, European Union law influenced the system and functioning of the Council of Ministers, as well as the cooperation of the Council of Ministers with the Sejm and the Senate, the Council of Ministers with

<sup>40</sup> G. della Cananea, *Independent Regulatory Agencies in the European Legal Space*, [in:] *European Regulatory Agencies*, pp. 162-163.

<sup>41</sup> *Prawo w zmieniającym się społeczeństwie*, ed. G. Skąpska, Toruń 1992, pp. 325-334.

<sup>42</sup> Judgment of the Constitutional Tribunal of 24 November 2010, K 32/09, OTK-A 2010, No. 9, item 108, point III.2.1.

<sup>43</sup> L. Zacharko, M. Janik, *Europeizacja administracji publicznej (kilka refleksji)*, „Acta Universitatis Wratislaviensis”, *Prawo nr 3999*, Wrocław 2019, p. 64. Cf. R. Hauser, A. Wróbel, Z. Niewiadomski, *Europeizacja prawa administracyjnego*, in: *System Prawa Administracyjnego*, vol. 3, Warszawa 2014, p. 122.

the President of the Republic of Poland, and the Council of Ministers with local governments was regulated<sup>44</sup>.

At the national level, within the government administration, various independent regulatory agencies responsible for the area of infrastructure were created (for example, the President of the Office of Competition and Consumer Protection, the President of the Energy Regulatory Office, the President of the Office of Railway Transport, etc.)<sup>45</sup>. Competition protection is an example of the influence of EU law on the national system solutions in the area of administration. In Poland, the Act of 16 February 2007 established the President of the Office of Competition and Consumer Protection as the central organ of government administration competent in matters of competition and consumer protection, performing tasks imposed on national authorities by the European Union.

Also, the OCCP introduces competition development programs and thus deals with the implementation of soft law, which is an example of the Europeanization of law from a supranational to a national area. Such Europeanization has a *top-down* character as the transfer of norms, values, and other factors occur from the top down. Of course, the Europeanization does not interfere with the way these programs are prepared and presented, as such matters are left to the national legislator. Europeanization regards the fact that, for instance, the Office of Competition and Consumer Protection in Poland transfers EU obligations within Poland.

The need for Europeanisation processes also derives from the implementation of Regulation 1/2003 and the Europeanization of its content in national legislation<sup>46</sup>.

The second manifestation of *soft law* activities resulting from the Europeanization processes is the publication of guidelines and explanations by the President of OCCP. Their purpose is to increase transparency and accountability in the application of competition and consumer protection law. So far, the President of OCCP has issued numerous guidelines containing specific instructions for entrepreneurs who intend to use the institutions regulated by the Act on Competition and Consumer Protection<sup>47</sup>.

<sup>44</sup> A. Gajda, *Udział organów samorządowych i partnerów społecznych w zarządzaniu sprawami Unii Europejskiej*, [in:] *Prawne aspekty członkostwa Polski w Unii Europejskiej*, ed. J. Barcz, Warszawa 2012, pp. 196-217.

<sup>45</sup> Cf. J. Zimmermann, *Prawo administracyjne*, Warszawa 2005, pp. 185-186.

<sup>46</sup> *Ibidem*.

<sup>47</sup> Example of guidelines and explanations, see [http://www.uokik.gov.pl/wyjasnienia\\_i\\_wytyczne.php](http://www.uokik.gov.pl/wyjasnienia_i_wytyczne.php), [accessed on 15.04.2015]. See: T. Miśko, *Rola i miejsce aktów soft law w publicznoprawnym systemie ochrony konkurencji w Polsce*, [in:] *Administracja niewładcza*, eds. A. Barczewska-Dziobek, K. Kłosowska-Lasek, Rzeszów 2014, p. 139.

The essence of the guidelines and explanations are, above all, prevention of competition or consumer protection. The guidelines are also a manifestation of the ongoing Europeanization processes. As a result, standards from the European Union are exported to the national system of competition and consumer protection. Even the imposition of tasks on the President of OCCP concerning the issuance of guidelines and explanations constitutes an element of the Europeanization of OCCP's activity.

The third and last area of soft law application by the President of OCCP is the interpretation of regulations. The problem, the Polish administration, had to solve was also shaping it in such a way that it would be possible to build an appropriate position at the national level, which was later presented in the European Union.

Another authority that performs tasks related to the regulation of fuel and energy<sup>48</sup> management and promotion of competition is the President of the Energy Regulatory Office, a so-called national regulatory authority. Specific requirements regarding the independence of the authority were implemented into Polish law by the Act of 26 July 2013<sup>49</sup>.

Subsequent regulatory body, which is the central government administration body responsible for the regulation of railroad transport, licensing of railroad transport, technical supervision of operation and maintenance of railroad lines and railroad vehicles, and railroad traffic safety, is the President of the Railway Transport Office, etc.<sup>50</sup>.

Polish regulatory body (UTK) cooperates with authorities of other European Union Member States. Cooperation also takes place with the European Commission and the European Railway Agency. Therefore, it can be assumed that it is another independent regulatory body, being subject to Europeanization. Also in other areas, one may distinguish special bodies, having the status of agencies, whose activities are subject to Europeanization<sup>51</sup>. The concept of Europeanization has played a significant role in shaping the organization of local government. As far as local administration was concerned, it had to be prepared to implement the findings of the European Union, as well as arranged in such a way as to effectively influence European policy. Thus, in the former case, our perspective of

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<sup>48</sup> J. Schwarze, *European Administrative Law in the Light of the Treaty of Lisbon*, „European Public Law” 2012, No. 2, pp. 285-304.

<sup>49</sup> So-called Small Energy Tri Pack in the form of Acts of 26.7.2013 on amendments to the Act - Energy Law and some other acts (Journal of Laws of 2013, item 984).

<sup>50</sup> A. Walaszek-Pyziół, *Europejska Agencja ds. Współpracy Organów Regulacji Energetyki – nowy wymiar europeizacji prawa energetycznego*, [in:] *Europeizacja Publicznego Prawa Gospodarczego*, eds. H. Gronkiewicz-Waltz, K. Jaroszyński, Warszawa 2011.

<sup>51</sup> L. Zacharko, M. Janik, *Europeizacja administracji publicznej (kilka refleksji)*, „Acta Universitatis Wratislaviensis”, *Prawo nr 3999*, Wrocław 2019, p. 212.

Europeanization was top-down, while in the latter – bottom-up. The effectiveness and efficiency of the administration were assessed through the lens of particular public policies that were somehow adopted from the European Union. The matter was further complicated by the fact that the administration had to enable the implementation of national policies.

The changes occurring in the administration took place in the Europeanization of standards, tasks, and organizational and procedural solutions, resulting in harmonization, adaptation, etc. Europeanization was associated with regionalization, namely the development of European Union regions, which was associated with a crisis in the concept of local government. Consequently, the Member States introduced administrative division units at lower than national, however, supralocal level.

Particular interest in scientific doctrine began to be associated with the concept of region and regional policy. Numerous organizations have been interested in such concepts, including the Council of Europe, which has accepted that the region is a level below the state. In 1994 it set up the Congress of Local and Regional Authorities of Europe, whose main objective is to help individual states in the management of their local governments<sup>52</sup>.

The Council of Europe during the Session of the Conference of Ministers in Valencia in 2007 accepted that the institution of the region (local government region) mostly affects the development of democracy through public participation in governance<sup>53</sup>.

The role and importance of the region are discussed in the European Charter of Local Self-Government. The region is recognized as the level of government that should be subject to the principle of subsidiarity, with simultaneous protection of the self-government principle. The Charter does not define local government but assumes that it is the responsibility of each state (with due regard to the regulations resulting from the process of regionalization, self-governance, and the rule of law). The Charter expresses the protection of regional self-government, points to the features of its financial system, the principles of participation in state affairs by regions, the establishment of liaison offices, etc.<sup>54</sup>.

Problems that arose with the precise designation of the term region, also influenced the actions of the European Union, which in the early 1970s introduced territorial classification called NUTS. The particular purpose of introducing such a classification was to solve the territorial division problem used in the European

<sup>52</sup> S. Malarski, *Regiony i Euroregiony. Założenia prawne, organizacyjne i administracyjne*, Opole 2003, p. 136.

<sup>53</sup> P. Jankowski, *Województwo jako region europejski*, Toruń 2013, p. 30.

<sup>54</sup> *Ibidem*, p. 38.

Union countries. This division threatened the use of statistical data and the comparison of individual Member States' regions.

The European Union has therefore categorized the regions according to their size into large, medium, and small regions<sup>55</sup>. The division also helps to identify the zones benefiting from the assistance of the EC Structural Funds. They cannot be treated as equivalent to individual administrative levels in the EU States<sup>56</sup>. Regarding Poland, as of January 1, 2018, there are seven NUTS 1 units, seventeen NUTS 2 units, and seventy-three NUTS 3 units.

Due to the intervention of structural funds, some macroeconomic indicators increased, which in turn caused the division of Masovian Voivodeship into two statistical units, and additional units were distinguished<sup>57</sup>.

In conclusion, the concept of a region is associated with a number of criteria of a political, cultural, historical, economic or administrative nature. Due to the increasing importance of the regions' role in the European Union, the EU secondary law on regional (cohesion) policy imposed and granted competences for its implementation to the Member States. For this purpose, the Polish local government administration had to prepare itself for the effective absorption of EU funds. Therefore, special structures responsible for such activities were established.

Poland's accession to the European Union generated many uncertainties, and therefore constructing an optimal absorption system and building support for regional development was by all means complicated. The government, while negotiating the terms of EU financial assistance, focused primarily on implementing a system that would be characterized by an implementation and absorption function<sup>58</sup>. It was therefore decided that large voivodeships would be created, which would constitute NUTS 2 units and thus become beneficiaries of EU funds<sup>59</sup>.

Public administration, both government and local government, was undergoing changes, which manifested itself in the introduction of new regulations, also in the area of civil service. It was supposed to be based on professionalism, openness, distinctiveness, transparency, responsibility, efficiency, and effectiveness. In this area, the civil service, as the core of public administration, began to operate

<sup>55</sup> Cf. M. Kulesza, *Rozwój regionalny. Zagadnienia instytucjonalne*, „Samorząd Terytorialny” 2000, no. 10, pp. 23-30.

<sup>56</sup> H. Jahns, *op. cit.*, s. 66.

<sup>57</sup> Commission Regulation (EU) 2016/2066 of 21 November 2016 amending the annexes to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS), Official Journal of the European Union L 322/1.

<sup>58</sup> A. Walenia, *Mechanizmy kontroli instrumentów prawno-finansowych polityki spójności Unii Europejskiej w perspektywie finansowej 2014-2020*, Warszawa 2018, pp. 51-52.

<sup>59</sup> A. Roznoch, *Podstawowe problemy polityki spójności w Unii Europejskiej po roku 2013*, [in:] E. Pancer-Cybulska, E. Szostak, *Dziś i jutro polityki spójności w Unii Europejskiej*, Wrocław 2012, p. 169.

as a professional organization, which entailed the realization of other values, such as neutrality, a clear definition of rights and obligations, or decent and open remuneration. Also, the legislation of civil servants' responsibilities is equally important<sup>60</sup>. The Europeanization of administration has been recognized and given the name of the creation of a European administrative area.

I. Lipowicz, referring to the Europeanization of civil service, mentions the emergence of a new authority, namely the European Personal Data Supervisor, and the requirement to adapt Polish administration to European standards. I. Lipowicz claims that it is an example of forced Europeanization. Examples of soft Europeanization are, in her opinion, the implementation of numerous twinning projects, the establishment of a telecommunications superregulator, or the construction of strong network agencies located in Polish administrative structures<sup>61</sup>, the introduction of a system of public policies coordination at various levels of administration, including the civil service<sup>62</sup>. The civil service is transforming. It is not happening in a vacuum, as it draws on numerous European solutions.

In such a context, one can speak of a competence transfer from the EU level to Poland and conversely. Of course, Europeanization does not solve all the problems of the civil service, or more generally public administration. Nevertheless, it is a kind of a keystone allowing the civil service to learn from its national counterparts in the EU Member States through the socialization process. The Polish administration also introduced soft law documents.

Therefore, the administration started to be perceived as an organization that should be assessed for its performance to some extent. Consequently, the importance of such notions as the evaluation is understood as a systematic and objective assessment of the implementation of programs and policies, their assumptions, objectives, results in terms of purposefulness, efficiency, sustainability, and usefulness of the undertaken actions. Due to evaluation, it is possible to introduce modernization measures aimed at strengthening capabilities determining the quality and social usefulness of administration. Hence, the ability to perform tasks related to the acquisition and management of information is analyzed.

<sup>60</sup> D. Bossaert, Ch. Demmke, K. Nomden, R. Polet, *Civil services in the Europe of fifteen. Trends and new developments*, European Institute of Public Administration, Maastricht 2001, p. 248.

<sup>61</sup> I. Lipowicz, *Europeizacja administracji publicznej*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2008, ROK LXX, vol. 1, pp. 7-12.

<sup>62</sup> J. Jakubek-Lalik, *Europeizacja zarządzania publicznego. Administracja krajowa w Unii Europejskiej*, [in:] *Administracja i zarządzanie publiczne. Nauka o współczesnej administracji*, ed. D. Sześciło, Warszawa 2014, p. 252. See: R. K. Tabaszewski, *Struktury koordynacji polityki europejskiej w Polsce*, „Annales Universitatis Mariae Curie-Skłodowska” 2011, vol. XVIII, no. 1, p. 51.



The Europeanization of the Polish administration thus involved strengthening synergies within the institutional structures of the public administration, as well as maintaining interactive contact between the subjects and recipients of such decisions. In post-communist countries, such as Poland, the public administration Europeanization was closely related to the anthropological ritual of transition from one reality to another. Thus, it may be assumed that the public administration Europeanization was associated with the change of the system of values and models of behavior considered as Eastern to a more Western in other words, with the modernization and Westernization of various aspects of the public administration operation in Poland. Such a seemingly cliché, however, does not mean that the West is automatically imitated. During this period certain transgression interests are formed, within the framework of which the ongoing processes of Europeanisation force diffusion of norms and values, as well as the creation of public policies.

It is necessary to remember that the degree of acceptance of the administration was and still is dependent on the type of transferred policy. It can additionally be assumed that in the case of extensive policies the transfer may have encountered certain problems. In the case of the administration, however, it was built from the bottom. The legacy of the communist system had to be effectively reformed. Thus, the ongoing processes of Europeanization provided a niche in the administration.

When analyzing the development of Polish administration, I assume that within the European Union, despite the diversity of political-economic systems forming European integration, a certain model of administration was established, which then in its legal, institutional, or discursive dimension became the source of diffusion processes and institutionalization of norms concerning the conduct of administrative policy and the implementation of the European administration idea principles.

## **Summary**

Poland's accession to the EU structures was a stimulus to reform the structures of public administration, introduce the civil service, and organize legal issues related to the administrative activities of offices, agencies, and institutions. Europeanization processes in this regard occurred in two major periods.

The first period consisted of efforts to join the EU, negotiations leading to the signing of the Accession Treaty. The above-mentioned period was characterized by

the top-down Europeanization, meaning the imposition of legal, procedural, and organizational solutions by the European Union and their adaptation to the Polish reality. The second period was the time of obtaining membership. Meanwhile, the Polish administration already had the formal right to vote and could to some extent prevent the unfavorable solutions imposed by the Community creator. It may therefore be argued that the first period is the time when Poland is a recipient of the Europeanization process, while in the second period Poland is an active co-creator.

When Poland accessed the European Union, it did not have a preconceived solution as to the future shape of its public administration. Poland learned from the experience of other countries, adapting the existing legal solutions in this field to the specificity of our country. It applied the knowledge of many prominent theoreticians dealing with issues of the public administration system. It can therefore be concluded that the final shape of the national administration represents the result of many legal as well as social aspects.

These aspects were influenced by historical conditions. They were undoubtedly influenced by the fact that attempts were made, at all costs, not to duplicate faulty solutions encountered before or during the first years after the system transformation. Cultural conditions were also key for the formation of public administration. Polish legal culture was at the beginning of learning completely new principles based on and resulting from the idea of the rule of law. As a result, some ideas were not adopted and those implemented were carefully analyzed.

Environmental and geographical issues influenced the formation of a new administration, the solutions of an administration compliant with the *acquis communautaire*, thus the process of implementation of a modernized and adjusted administration to European standards partly resulted from the above-mentioned aspects. These actions aimed at creating such systemic solutions enabling public administration to be efficient and effective in implementing European policy, and thus, to be able to conduct particular public policies.

From the very beginning, activities undertaken by the Polish administration in the field of European policy were oriented towards coordination and an approach to avoid becoming a victim of Europeanization processes. In turn, the implementation of particular public policies of the European Union in Poland was based on constructive realization and construction of the European Union development processes.

Thus, it was a question of stable administrative structures, responsible for the coordination of public policies, as well as a new attitude of particular political elites to the phenomenon. Nevertheless, while the Polish administration

was modernized, such period was not without conflicts or divergences in the perception of Poland's interests. Frequent tensions arose between the organs of executive power, reflecting the fact that, although administration officials had developed a certain position, as a consequence the government was in charge. One could mention, for instance, particularism or silo mentality in the treatment of European issues.

J. Jakubek-Lalik argues that during that period certain weaknesses became apparent, such as the fragility of political leadership in European politics. Moreover, the state lacked strategic thinking and an institutionalized analytical and conceptual basis for an effective European policy.

The administration also demonstrated insufficient ability to set and quantify European policy objectives and often found it difficult to divide strategic, implementation, and reflection functions within the administration<sup>63</sup>.

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<sup>63</sup> J. Jakubek-Lalik, *Procesy koordynacji polityki europejskiej w polskiej administracji rządowej. Studium administracyjno-prawne*, Warszawa 2016.

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## Wybrane aspekty europeizacji administracji publicznej w Polsce

### Streszczenie

Głównym celem badawczym artykułu jest wskazanie wybranych modeli i sposobów europeizacji administracji publicznej oraz przybliżenie aspektów prawnych i społecznych. Dokonana selekcja materiału badawczego powoduje, że w niniejszym artykule próbowano także wskazać, w jaki sposób określone uwarunkowania miały wpływ na procesy europeizacji. Wyeksponowano również kontekst polityczny oraz prawny w przygotowaniu administracji publicznej (zarówno rządowej, jak i samorządowej) do efektywnego uczestnictwa w politykach publicznych Unii Europejskiej.

**Słowa kluczowe:** europeizacja, europeizacja administracji publicznej, Unia Europejska