



УНИВЕРЗИТЕТ У НОВОМ САДУ
ПРАВНИ ФАКУЛТЕТ У НОВОМ САДУ



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ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Хармонизација српског и мађарског права са правом Европске уније

**A szerb és a magyar jog harmonizációja az
Európai Unió jogával**

**Harmonisation of Serbian and Hungarian Law
with the European Union Law**

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Administrative Procedures and EU Law: Consular Protection Procedure in a European Way²⁴

Abstract: *The legislative competences of the European Union have different sort of influence on national legal rules and this effect has been continuously expanding. It has significant impacts on legal areas which once were considered as pure domestic issues. Even if the EU's legislative competence is relatively modest or it does not explicitly expand on a certain legal area, there might also be implicit influences issuing from obligations on related legal fields. The structure and functioning of national administration is a typical example, so as the consular protection ensured for nationals abroad. The paper aims to give a brief exploration how these two classical domains of national legislation, tradition and foreign relations is rather implicitly than explicitly Europeanised and driven under norms of the European Union.*

Keywords: *European administration, national administration, consular protection, administrative procedure.*

1. The place and role of consular protection in the EU

1.1. Classical domestic legal areas and EU law: national administration and consular protection

National public administration and the competence to regulate it has always been reserved for Member States even if effective implementation of European Union (EU) law is regarded as a matter of common interest and a key for the proper functioning of EU law.²⁵ Until the entry into force of the Lisbon Treaty,

¹ „Supported by the UNKP-17-4 New National Excellence Program of the Ministry of Human Capacities”

²⁵ The Lisbon Special European Council (March 2000): Towards a Europe of Innovation and Knowledge. Presidency Conclusions Lisbon European Council 23 And 24 March 2000. <http://>

the founding treaties did not contain any provision on public administration of the EU or that of the Member States'. Despite some sector specific normative rules of administrative nature, the execution of EU law was a purely *result- based obligation (obligation de résultat)*.²⁶ Since the 1990', there have been many direct steps to lay down the principles governing the structure, the functioning and the procedures of public administration of Member States to serve better the execution of the *acquis*²⁷ and finally, by the Lisbon Treaty, *everyone's* right to a *good administration*²⁸ by the institutions and organs of the EU and also by that of Member States when they execute EU law, has become a fundamental right²⁹ acknowledged by a primary source of law.³⁰

eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:c10241 (20.12.2017.) point 9. and 17.; Wolfgang Drechsler: Towards a Neo-Weberian European Union? Lisbon Agenda and Public Administration. Halduskultuur, Vol. 10. 2009. 7. 10. p.

²⁶ European Principles For Public Administration, Sigma Papers: No. 27. CCNM/SIGMA/PUMA(99)44/REV1. p. 6.

²⁷ See the Principles of Public Administration of the SIGMA program for candidate and potential candidat states and ENP countries: Principles of Public Administration. <http://www.sigmaweb.org/publications/principles-public-administration.htm> (20.12.2017.); European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INL)) P7_TA(2013)0004.preamble; Roberta Panizza: EU Administrative Law. Policy Department C: Citizens' Rights and Constitutional Affairs European Parliament PE 519.207, Brussels. 2015. [http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/519207/IPOL_ATAG\(2015\)519207_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/ATAG/2015/519207/IPOL_ATAG(2015)519207_EN.pdf) (20.12.2017.) 2. p.; Diana-Urania Galetta – Herwig C. H. Hofmann – Micaela Lottini–Nikolaus Marsch – Jens-Peter Schneider –Morgane Tidghi: Book VI – Administrative Information Management. ReNEUAL Model Rules on EU Administrative Procedure. http://renewal.eu/images/Home/BookVI-information_management_online_publication_individualized_final_2014-09-03.pdf (20.12.2017.) [ReNEUAL Book VI] p. 6.

²⁸ Charter of Fundamental Rights of the European Union. OJ C 326, 26.10.2012. pp. 391–407. [EU Charter] Article 41.

²⁹ Long before the entry into force of the Lisbon Treaty and the EU Charter of Fundamental Rights became binding, the European Court of Justice recognised a number of fundamental rights, including the right to *good administration*, as a general principles of EU law. Francesca Ferraro – Jesús Carmona: Fundamental Rights in the European Union The role of the Charter after the Lisbon Treaty. European Parliamentary Research Service, PE 554.168. 2015. pp. 5-6. See also: The existence of a remedy of a judicial nature against any decision of a national authority is a fundamental right. *C-222/86 Union Nationale des Entraîneurs et Cadres Techniques Professionnels du Football (UNECTEF) v Heylens and Others* [1987] ECR–4097, paras 14-15. The right to defence is a fundamental principle of the Community legal order in administrative procedures which may lead to the imposition of penalties and also during preliminary inquiry procedures. *C-374/87 Orkem v Commission of the European Communities* [1989] ECR–03283, paras 3, 28, 32. The respect of the rights guaranteed by the Community legal order in administrative proceedings is of fundamental importance. *T-167/94 Detlef Nölle v Council of the European Union and Commission of the European Communities* [1995] ECR – II-02589, para 7.

³⁰ The EU Charter is binding upon the EU institutions when enacting new measures, as well as for the Member States whenever they act within the scope of EU law. Margrét Vala Kristjánsdóttir: Good Administration as a Fundamental Right. Icelandic Review of Politics and Admi-

The organs performing consular tasks are external units of State administration on the territory of other States, therefore, their existence and the scope of their activity has always depended on bilateral relations of the two actors of the legal relationship, notably, the sending and the receiving States.³¹ Such State service for nationals is a manifestation of personal sovereignty of States and generally accepted by international law.³² The EU is not a State thus it invented the idea of EU citizenship as a unique link between the EU and the citizens holding the nationality of any Member States to reinforce a sense of togetherness with equal benefit of certain rights including the consular protection on the territory of third States.³³ To regulate the core issue of this latter, being an area of foreign policy, EU competences are the weakest of all.³⁴ To promote the practice of such kind of administrative procedure, namely, the cooperation of actors taking part in the consular protection procedure of a citizen in need, the European Council, acting upon its special legislative competence given by the Lisbon Treaty,³⁵ adopted a directive in 2015 *on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries* [CPD]. It requires implementing measures until May 2018,³⁶ and it has significant effects on areas of law which are considered as domestic.

nistration, 9 (1) 2015. p. 244.; *C-617/10. Åklagaren v Hans Åkerberg Fransson* [2013] EU:C:2013:105, para. 18. cf. *C-399/11. Stefano Melloni v Ministerio Fiscal* [2013] ECR I-0000, para 60.

³¹ See, Vienna Convention on Consular Relations, Vienna, 24 April 1963, 596 UNTS 261 [VCCR] Article 5. Anthony Aust: Handbook of International Law. Cambridge, Cambridge University Press, 2010. p. 42.; Robert D. Sloane: Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality. Harvard International Law Journal, 50 (1) 2009. pp. 29–33.

³² Christopher Lau: Diplomatic & Consular Law: Research Guide. Berkeley Law Scholarship Repository, Legal Research Series. 2. 2015. p. 7.

³³ Consolidated version of the Treaty on European Union. OJ C 326, 26.10.2012. pp. 13–390. [TEU] Article 9; Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012. pp. 47–390. [TFEU]. Article 20; 23.

³⁴ Jan Wouters – Sanderijn Duquet – Katrien Meuwissen: The European Union and Consular Law. Leuven Centre for Global Governance Studies, Working Paper No. 107. 2013. p. 3.; Florian Geyer: The External Dimension of EU Citizenship. Arguing for Effective Protection of Citizens Abroad. CEPS, No. 136. 2007. p. 5.

³⁵ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. OJ C 306, 17.12.2007, pp. 1–271. [Lisbon Treaty] 36). TFEU Article 23. al. 2.

³⁶ Council Directive 2015/637 of 20 April 2015 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries and repealing Decision 95/553/EC. OJ L 106, 24.4.2015. pp. 1–13. [CPD] Article 17.

1.2. The procedure of consular protection in the European administration

The EU has no competence to regulate neither consular protection, nor public administration, except for *administrative cooperation* since the Lisbon Treaty introduced competences to that aim.³⁷

The CPD provides for a cooperation framework with the competent EU organs and the diplomatic and consular representations of Member States at site. Being the heart and the motor of the procedure,³⁸ the ultimate executive authorities to perform the task of consular protection are the consular authorities³⁹ of Member States. The EU has no competence in this issue therefore it has no institution or organ to proceed.

The citizen who is unrepresented on the territory of a third State has right to turn to any consular authorities of any Member States to get consular help and be treated as an own national.⁴⁰ This authority, after identification, shall contact the competent authority of nationality to give it the possibility to help its own citizen.⁴¹ If the authority of nationality cannot help, then it is the requested consular authority of site that will provide help the same way and manner as it would do to its own national. It sounds a simple cooperation of authorities; however, this in itself reveals many legal issues. Mainly, in case of a big number of such requests, notably in crisis, the procedure gets complicated. Organs of direct administration of European administration: *the delegation of the EU* at site⁴² is involved togeth-

³⁷ Lisbon Treaty Article 2 E g); 150) Article 176 D.; TFEU Article 197. 1. *Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.* 2. *The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States.* 3. *This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Treaties providing for administrative cooperation among the Member States and between them and the Union.*

³⁸ CPD chapter 2.

³⁹ Consular function can be practiced by both diplomatic and consular agents. VCCR Article 3.; 70.

⁴⁰ CPD Article 2.

⁴¹ CPD Article 3; 8.

⁴² EU delegations in the world. https://eeas.europa.eu/headquarters/headquarters-homepage/area/geo_en (20.12.2017.); TFEU Article 221; CPD Article 11. Before the Lisbon Treaty entered into force, this role was fulfilled by the Member State holding the rotating EU Presidency. It might be seen the loss of power and visibility in comparison to the rotating presidency system. Damien Helly – Alisa Herrero – Anna Knoll – Greta Galeazzi– Andrew Sherriff: A closer look into EU's

er with the headquarter and different strategic units of the *European External Action Service (EEAS)*⁴³ under the direction of the High Representative of foreign policy (HR/VP) and the *Lead State* if designated any.⁴⁴ Beside the numerous actors, there are different legal areas falling under different EU competencies are conjoint in case of a consular protection procedure: crisis management;⁴⁵ family policy⁴⁶ and maybe the most relevant in the point of view of administrative law: fundamental rights protection. The right to consular protection is a fundamental one⁴⁷ and it is performed by administrative organs of the States. Administrative authority procedures need to be in conformity with the guarantees inherent to another fundamental right, namely the *right to good administration*.⁴⁸ This latter requirement leads to those challenges that are the subject of this paper as they are significant influences to the administration of Member States: in structural, procedural, and the material law aspects.

2. Europeanisation of consular protection procedure

The obligation refers to the *equal treatment* of foreign EU citizen in certain situations⁴⁹ but EU law unify the nature of tasks only in two areas: the financial

external action frontline Framing the challenges ahead for EU Delegations. ECDPN, Briefing Note, No. 62. 2014. p. 9.; Vicky Reynaert: The European Union's Foreign Policy since the Treaty of Lisbon: The Difficult Quest for More Consistency and Coherence. The Hague Journal of Diplomacy, Vol. 7. 2012. p. 224., Frauke Austermann: European Union Delegations in EU Foreign Policy. A Diplomatic Service of Different Speeds. Palgrave Macmillan, Basingstoke, 2014. p. 57.

⁴³ Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service (2010/427/EU) OJ L 201, 3.8.2010. pp. 30–40. [EEAS Decision] Article 1. 2.; Christian Lequesne: At the Centre of Coordination: Staff, Resources and Procedures in the European External Action Service and in the Delegations. In: Rosa Balfour – Catherine Carta – Kristi Raik: The European External Action Service and National Foreign Ministries. Convergence or Divergence? Ashgate, Farnham, 2015. p. 36.; See autonomy of EEAS in detail: Gatti, Mauro (2016): European External Action Service: Promoting Coherence through Autonomy and Coordination. BRILL, Leiden, 2016. pp. 105-190.

⁴⁴ Council European Union guidelines on the implementation of the consular Lead State concept (2008/C 317/06) OJ C 317, 12.12.2008. [Lead State Guidelines] pp. 6–8. Article 2.1-2.4

⁴⁵ CPD Article 13. cf. Decision 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism. OJ L 320, 6.11.2014. pp. 1–45. Article 16. point 17.

⁴⁶ The non-EU citizen accompanying family member of the EU citizen is also entitled to consular protection under the same conditions as the EU citizen. CPD Article 5.

⁴⁷ EU Charter Article 46.

⁴⁸ EU Charter Article 41.

⁴⁹ Consular protection shall be ensured in case of death, serious accident or serious illness, arrest, or detention, falling victim of violent crime, loss or theft of identity documents, and situations requiring repatriation or relief especially in armed conflicts, and in case of natural disasters. CPD Article 9; CPDec. Article 5.; see also Ferdinand Wollenschläger: The Europeanization of Citizenship. National and Union Citizenships as Complementary Affiliations in a Multi-Level

help and its reimbursement⁵⁰ and the form of the *emergency travel document*⁵¹ for those whose official travel documents are lost or stolen. Therefore, the scope of acts of consular protection is relatively colourful and it creates obligation for a material law changes mainly for those States that don't even regulate this issue in their domestic rules. However, all Member States have is obliged to ensure that the personal scope of their existing norms are in conformity with EU requirements and given the fact that EU law is *pacta tertiis* for third States⁵², the Member States are called to initiate the necessary changes in their bilateral treaties to avoid potential conflicts.⁵³ In addition, the CPD expanded the scope of protection to accompanying family member without defining who is covered by this notion. Legal uncertainty embodied in this issue might lead to legal application problems similarly to cases concerning dual nationals.⁵⁴

The involvement of direct level organs of EU administration and the designation of a Lead State is not able to override such difficulties, although it highlights another aspect of consular protection policy of the EU: the organisational relationship among the authorities and organs in the procedure. State administration is hierarchical: the consular authorities act under the direction and control of a central authority, usually the foreign ministers. The introduction of coordination and cooperation framework adds a *de facto* superior level to this classical system of State administration and it reveals the problematic of vertical relationship and the question of role of EU organs in it. As a matter of fact, the Member States has exclusive competence to perform consular tasks and they are called to make practical arrangements among themselves to that end, but it does not replace that guarantee system which qualifies it as *good administration*. The designation of the Lead State for instance is a possibility and although it has a coordination role, and it becomes responsible for consular protection while the effective participation

Polity. Paper presented at the EUSA 10th Biennial International Conference Montreal, Canada, 17-19 May, 2017. <http://aei.pitt.edu/8025/1/wollenschlager-f-03h.pdf> (20.12.2017.) pp. 8-12.

⁵⁰ CPD Article 14-15. *cf.* Council Decision 95/553/EC of the Representatives of the Governments of the Member States meeting within the Council of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations. OJ L 314, 28.12.1995. pp. 73–76. Article 7.

⁵¹ 96/409/CSFP: Decision of the Representatives of the Governments of the Member States, meeting within the Council of 25 June 1996 on the establishment of an emergency travel document. OJ L 168, 06.07.1996. pp. 4 – 11 Article 1.

⁵² Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, 1155 UNTS 331. Article 34-35.

⁵³ Treaty on European Union. OJ C 191, 29.7.1992, p. 1–112. Article 8c, TFEU Article 23, CPD Article 12. *cf.* Article 1.2.

⁵⁴ See a particular example: Ryszard W. Piotrowicz: The Australian-Hungarian Consular Treaty of 1988 and the Regulation of Dual Nationality. *Sydney Law Review*, Vol. 12. 1990. pp. 569 – 570.

of other Member States in this work is based on voluntarism.⁵⁵ Delegations are supposed to support the work of the consular authorities and the different units of the EEAS may be required to do so, in the point of view of the individual, the clear roles and responsibilities of the actors of an administrative procedure would be crucial.

The principle of *solidarity* and *loyal cooperation*⁵⁶ urges Member States to interpret EU *acquis* in that ways to act in conformity with the common goals and all those measures that serve common goals, at the same time, principles cannot create competence and cannot provide a direct legal basis for a measure at EU level. Indeed, principles primarily indicate how a competence should be used and they orient the application of norms.⁵⁷ Thus, principles shall not substitute the lack of legal rules for cooperation of the actors and the delimitation of roles and responsibilities which would be the mostly required in the point of view of individual procedural rights related to *good administration*. Absence of obligatory norm on organisation reveals the question of proper legal remedy and the uncertainty of the competent forum to that end.

The present status of organisational background for consular protection is not in conformity with the *open, reliable, and transparent public administration* that is envisioned by the EU as it contradicts to the *principle of rule of law* and the *principles of good administration*. Administrative procedural rules of Member States cannot make up for the cooperation rules among the actors of the procedure. Cooperation of authorities – no matter if it is a vertical or horizontal or a mixture of the two is – shall be based on a general norm which, among others, delimitate the rights and responsibilities of the authorities, regulate their interaction also ensure the procedural rights of the individual including the right to effective legal remedy. In cases when immediately enforced measures are taken the fundamental rights guarantees including administrative procedural rights are even more important.

*“The role of a well -regulated administrative procedure administrative procedure to secure liberty has been emphasized repeatedly.”*⁵⁸ The importance of a properly functioning administration is not only a requirement of the EU; the significance of rule of law and protection of individual interests by procedural

⁵⁵ Lead State Guidelines, 2.; 5.

⁵⁶ Marcus Klamert: *The Principle of Loyalty in EU Law*. Oxford University Press, Oxford. 2014. p. 141. See also, Chittharanjan Felix Amerasinghe: *Principles of the Institutional Law of International Organizations*. Cambridge University Press, Cambridge. 2005. pp. 176 –187.

⁵⁷ Alison McDonnell: *Solidarity, Flexibility, and the Euro-Crisis: Where do Principles Fit in?* Lucia Serena Rossi – Federico Casolari (eds): *The EU after Lisbon Amending or Coping with the Existing Treaties?* Springer, Heidelberg, 2014. p. 66.

⁵⁸ Jürgen Schwarze: *Judicial Review of European Administrative Procedure*. Law and Contemporary Problems, Vol. 68. 2004. p. 146.; Jill Wakefield: *The Right to Good Administration*. Kluwer Law International, Alphen aan den Rijn. 2007. p. 21.

rights guarantees are also core values the Council of Europe⁵⁹ and are echoed by Article 41 of the EU Charter. This reasoning leads back to the domestic regulation of consular protection as consular protection cases are the least documented areas of public administrative law, and in addition, the relevant domestic norms are also diverse. According to data before the adoption of the directive of 2015, one third of the Member States regulate it in an independent legal act, and there are States where it is still an area of political influence and do not even have regulation on the subject.⁶⁰ All these circumstances increase of lack of transparency and reliability of the consular protection. As the centre of cooperation is data -transfer and data sharing even in the simplest case is it is a duty to make it available that the competent authority of the State of nationality and the State of site proceeds only if this latter cannot or will not help.⁶¹ The basic rules to govern the network of authorities is crucial first, to avoid forum shopping and parallel procedures, second, because of the legal remedy options.⁶² Special features of measures taken as consular protection cannot justify the lack of procedural guarantees that are requirements for any other administrative procedures and put the principle of *ubi ius, ibi remedium*: where is a right, there shall be legal remedy to cure maladministration. The supple nature of consular protection procedure, the lack of legal guarantees and normative background of the cooperation of actors involved in the procedure is consistent with the interest for a reliable and transparent administration. Legal certainty and rule of law would require clear cooperation rules among authorities, and the extensive autonomy, like in the former regime that left Member States to negotiate the details among themselves⁶³ and the voluntary cooperation in crisis management can be explained in the point of view of foreign policy approach and EU competences thereof but not in the public administrative approach.

An important distinction shall be made: the EU norms and requirements apply only for consular protection cases in third States. Other consular task and consular protection in the territory of EU Member States are outside the scope of the EU's consular protection policy.

⁵⁹ See, Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration, adopted by the Committee of Ministers on 20 June 2007 at the 999bis meeting of the Ministers' Deputies. See in details: Váczi Péter: A jó közigazgatási eljáráshoz való alapjog és annak összetevői. Dialóg Campus, Budapest–Pécs. 2013. pp. 128–167.

⁶⁰ Consular and Diplomatic Protection. Legal Framework in the EU Member States. CARE Project Final Report. 2010. <http://www.careproject.eu/images/stories/ConsularAndDiplomaticProtection.pdf> (20.12.2017.) p. 582–586.

⁶¹ CPD Article 3.

⁶² ReNEUAL Book VI. p. 245. VI-3.

⁶³ CPD (6); (19). There is no normative manifestation of such negotiation from the period before the adoption of the CPD. Eric Schweighofer: The Protection of Union Citizens in Third Countries: aspects of international and European law. Sebastiano Faro – Mario Chiti – Eric Schweighofer (eds.) European Citizenship and Consular Protection. Napoli, Editoriale Scientifica, 2012. p. 99.

3. Concluding remarks

The EU, by using its power to regulate cooperation of authorities and declaring consular protection in Third States as a fundamental right⁶⁴ and settle the frames of it in a directive is not yet in conformity with neither the principle nor the fundamental right of good administration. In fact, the doctrine of procedural autonomy allows Member States to decide upon the implementation of EU law. Accordingly, Member States may lay down the rules governing their actions, therefore administrative procedural law is a domestic competence. However, this procedural autonomy has implicit limitations: first, when the implementation refers to a provision with direct effect, and second, when the application of a general principles of EU law require so. Article 51 al 2 of the EU Charter states that the provisions of the EU Charter shall not establish any new power or task for the EU or modify powers and tasks defined by the TEU and TFEU. It also must be noted that the general obligation implementing the EU law in a *good faith* and in a consistent manner so as the roots of fundamental rights already existing in the constitutional traditions of Member States. Therefore, the actions taken for the proper implementation and enforceability of rights expressed in the EU Charter cannot be considered as direct expansion of competences of the EU. The right to consular protection in third States is a fundamental right with direct effect,⁶⁵ so as the *right to good administration*, and the *principle of good administration* is a general principle of EU law, the procedural autonomy no longer exists in this field. The effective implementation of the above-mentioned provisions, namely the duty of consistent interpretation requires proactive measures.⁶⁶ In fact, Article 197 of TFEU serves that aim and at least for horizontal cooperation of authorities.

Since the reforms of the Lisbon Treaty, the Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, is empowered to adopt directives establishing the coordination and cooperation measures necessary to facilitate consular protection⁶⁷ and it did so when it adopted the directive on consular protection. In addition, the EU should also consider using its supportive legislative power on administrative cooperation by means of regulations in accordance with the ordinary legislative procedure to improve administrative capacity to implement EU law and to facilitate the exchange of

⁶⁴ Kochenov, Dimitry: *EU Citizenship and Federalism. The Role of Rights*. Cambridge University Press, Cambridge, 2017. pp. 596-597.

⁶⁵ Eva-Maria Alexandrova Poptcheva: *Consular Protection Abroad: A Union Citizenship Fundamental Right?* PIE, Brussels, 2014. pp. 117-118.

⁶⁶ See, Damian Chalmers – Adam Tomkins: *European Union Public Law. Text And Materials*. Cambridge University Press, Cambridge, 2007. pp. 381-394.; Klamert (2014) pp. 125-138.

⁶⁷ TFEU Article 23 al. 2.

information to improve administrative cooperation purely concentration on the administrative procedural basics.⁶⁸

Systematically, the EU has expanded its ruling on an area where it has had no further competences while the enforcement of fundamental rights and the conformation to the rule of law including principles of good administration would require a common executive regulation. Although, in the past two decades, no real practice of this kind of consular protection has evolved, the need for consular protection is not a theoretical question. In recent years its importance has been increased. In 2015, more than 160 cases were reported when a consular authority provided help for non-national EU citizens.⁶⁹

The directive of 2015 will replace the former regime on 1 May 2018, thus Member States still have time to implement the necessary measure for its success but given the fact that since 1994 there have been no step forward further international negotiations to settle the problem of *pacta tertiis* or any kind of arrangements for the burden share, in the forthcoming year, no progress is predicted. It would not solve the problem of *pacta tertiis*, currently the EU seems to have no competency for that, but at least it would stand as a proper, transparent, clear, and predictable procedural background for the interrelation of authorities taking part in the procedure.

All these aspects show how national public administration, procedural law and substantive law is influenced by EU norms of a policy even if the EU has no competence to directly regulate them. Without entering details and skipping the brainstorming on possible solutions it is clear from the presented examples that how national public administration, procedural law and substantive law is influenced and challenged by EU norms and how it is Europeanised even if it is not the expressis verbis aim and the EU has no competence to harmonise them.

⁶⁸ TFEU Article 197. al. 2.

⁶⁹ See numbers and charts in: Consular Affairs Working Party Report of April 16 2016. Consular Cooperation Initiatives – Final report. Presented by the CCI Core Team to the EU Working Party for Consular Affairs COCON – 8. CFSP/PESC 345, 29 April 2016 Brussels; See also, Schiffner Imola: Az uniós polgárok védelme harmadik államokban – a statisztikák fényében. in: Katona Tamás (ed.): Ünnepi e-könyv Herczeg János professzor 70. születésnapjára. Szegedi Tudományegyetem, Állam-és Jogtudományi Kar, Szeged, 2011. pp. 509.

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Eljárási jogi kérdések a közigazgatási jog és az EU jog metszetén: konzuli védelmi eljárás európai módra

Összefoglalás: *Vitathatatlan tény, hogy az Európai unió joga jelentős befolyással bír a tagállamok belső jogi rendelkezéseire. Az EU jogalkotási hatáskörétől függően vannak esetek, amikor ez a hatás közvetlen és domináns, egységesítésre törekvő, míg más esetekben inkább közvetett módon képes befolyásolni olyan jogterületeket is, amelyek továbbra is nemzeti hatáskörként látszólag elszigetelt csoportot alkotnak. A tanulmány két ilyen terület házasítását igyekszik bemutatni az európaizálódás tükrében.*

Az EU konzuli védelmi politikája az uniós polgárság kapcsán egy ideje erősödő tendenciát mutat, amely egy 2015-ben elfogadott új irányelvben ölt testet. A konzuli védelem az államok nemzetközi szokásjogilag is elismert lehetősége arra, hogy a külföldön tartózkodó bajba jutott állampolgáriaknak segítséget nyújtsanak. Ennek fő szerve a konzuli hatóság, ebből eredően pedig mind a segítségnyújtás jellege és a konzuli hatóságok munkája a külkapcsolatok, és kétoldalú nemzetközi megállapodások függvénye. Lévé az állam külhoni közigazgatási szervei, ezek eljárása ide értve a konzuli védelmi eljárást is, és a közigazgatási szervezetrendszerben elfoglalt helyük is hatáskör szempontjából tradicionálisan nemzeti, direkt hatásköre az EU-nak pedig egyik terület szabályozására sincs. Az uniós polgárokat harmadik államokban megillet konzuli védelemhez való alapvető jog, valamint a tagállamok konzuli hatóságainak ezirányú munkájának, főként az egymással, valamint egyéb aktorokkal való együttműködésének, a tevékenység koordinációjának keretét adó irányelv implementálást igénylő szabályai alapvetően kihatnak azokra a területekre is, amelyek nemzeti hatáskörbe tartozóan nem állnak közvetlen uniós szabályozás hatálya alatt. Az alapjog érvényesülése érdekében a konzuli védelem eljárásnak és intézményrendszerének is szükségképpen európaizálnia kell.

Kulcsszavak: *európai közigazgatás, nemzeti közigazgatás, konzuláris védelem, közigazgatási eljárás*

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Управни поступци и Право ЕУ: Поступак конзуларне заштите на европски начин⁷⁰

Сажетак: Леґислативне надлежности Европске уније имају различите видове утицаја национална правна правила и овај ефекат се налази у конституицијом порасиу. Поменути утицај остварује се у областима права које су раније смањене искључиво унутрашњим питањима. Иако су законодавне надлежности Европске уније релативно скромне или се експлицитно не односе на одређену област права, могући су имплицитни утицаји настали из обавеза у оквиру одређених правних области. Структура и начин рада домаће управе је типичан пример за то, кад се ради о конзуларној заштити пруженој својим држављанима у иностранству. Овај рад има за циљ да прикаже исцрпљивање о томе како су два класична домена домаће законодавства, традиција и спољни односи пре имплицитно него експлицитно „европеизована“ и развијана под утицајем норми Европске уније.

Кључне речи: Европска управа, домаћа управа, конзуларна заштита, управни поступак.

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