

## **The Constitutional Fundamentals of Public Administration in Belgium, France, Germany, Italy, Latvia and Luxembourg**

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**Abstract:** The aim of our study is to present the administrative system in some European Union member states. The systemic approach offers us the possibility to achieve a comprehensive overview of the scope and content of public administration. In terms of systemic evaluation, public administration is seen as a social entity specific to certain period of development, characterized by a mode of action, structure and logic. Starting from the systemic approach we will highlight how member states' constitutional regulations tailored the European administrative systems. Public administration, as a system, is understood as an evolutionary process, with objects, attributes and relationships that combine and allow proper operation. Also, public administration system approach provides the basis for a consistent and rigorous approach to an ideal model of government that summarizes all the advantages - goals for any administration, namely: nationality, effectiveness, optimum citizens serving etc.

**Keywords:** constitutional regulations; administrative system; principles; distribution of powers

### **1. Introduction**

The administrative system is understood as the whole system of bodies, authorities, public institutions and services that perform public administration activities, meaning organizing the execution and enforcing the laws, in order to ensure functionality and consistency of the rule of law. The many administrative authorities of the state - and local communities - determine the system constituted for the achievement of two main functions of public administration: (1) intermediary mechanism constituted for execution and (2) main receiver and carrier of people's requirements. Therefore, the whole system of public administration is arranged as a mixed structure, hierarchical and functional regardless the legal system.

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## 2. The Constitutional Regulation of Public Administration

Organization, operation and the acts and relations of public authorities are determined by the fundamental regulations, whatever name they bear it: constitution or fundamental law. The state framework is stated in the basic law(s), which could be in a single constitutional document, in some countries, or in several normative acts, such as in Sweden and United Kingdom of Great Britain and Northern Ireland (UK).

The constitutional movement in the European area was initiated in 1215 with the adoption of Magna Carta and continued with the first written constitution in 1791 in France. After the model of the French constitution other European countries have adopted constitutional provisions, such as: the Act of Succession (Sweden, issued on 8 June 1809 and adopted by Parliament on 26 September 1810), the Constitution of the Kingdom of the Netherlands (August 24, 1815), the Constitution of the Grand Duchy of Luxembourg (October 17, 1868). As we shall see, all these examples of constitutional provisions are still in force and enforceable, so that it is why we do not think that every era must have its constitution, especially because the constitution express the durability of political and legal settlement, mainly the stability of the state. For a better understand of our perspective we present in the following lines a table of the EU member states constitutions:

**Table 1. The fundamental laws of the European Union Member States**

<i>EU member state</i>	<i>The Fundamental law</i>	<i>Date of adoption/ratification/approval</i>
Austria	The Federal Constitutional Law of the Federal Republic of Austria	January 1st, 1930
Belgium	The Constitution of the Kingdom of Belgium	February 17, 1994
Bulgaria	The Constitution of the Republic of Bulgaria	July 13, 1991
Croatia	The Constitution of the Republic of Croatia	December 22, 1990
Cyprus	The Constitution of the Republic of Cyprus	August 16, 1960
Czech Republic	The Constitution of the Czech Republic	December 16, 1992 (e.i.f. January 1st,1993)
Denmark	The Constitutional Act of Denmark The Act of Succession	June 5, 1953 March 27, 1953
Estonia	The Constitution of the Republic of Estonia	June 28, 1992
Finland	The Constitution of the Republic of Finland	June 11, 1999 (e.i.f. March 1, 2000)

France	The Constitution of the French Republic	October 4, 1958
Germany	Basic Law of the Federal Republic of Germany	May 8, 1949 (e.i.f. May 23, 1949)
Greece	The Constitution of the Republic of Greece	July 24, 1974 (e.i.f. June 11, 1975)
Hungary	The Fundamental Law of Hungary	April 25, 2011 (e.i.f. January 1st, 2012)
Ireland	The Constitution of Ireland	July 1st, 1937 (e.i.f. December 29, 1937)
Italy	The Constitution of the Italian Republic	December 22, 1947 (i.v. January 1st, 1948)
Latvia	The Constitution of the Republic of Latvia	February 15, 1922 (e.i.f. November 7, 1922)
Lithuania	The Constitution of the Republic Lithuania	October 25, 1992 (e.i.f. November 2, 1992)
Luxembourg	The Constitution of Grand-Duchy of Luxembourg	October 17, 1868
Malta	The Constitution of the Republic of Malta	September 21, 1964
Netherlands	The Constitution of the Kingdom of the Netherlands	August 24, 1815 (revised almost entirely in 1983)
Poland	The Constitution of the Republic of Poland	April 2, 1997 (e.i.f. October 1997)
Portugal	The Constitution of the Portuguese Republic	April 2, 1976 (e.i.f. April 25, 1976)
Romania	The Constitution of Romania	December 8, 1991
Slovakia	The Constitution of the Slovak Republic	October 1st, 1992
Slovenia	The Constitution of the Republic of Slovenia	December 23, 1991
Spain	The Spanish Constitution	October 31, 1978 (e.i.f. December 27, 1978)
Sweden	The Constitutional Acts of the Kingdom of Sweden: The act of Succession, The Freedom of the Press Act, The Instrument of Government, The Fundamental Law of Freedom of Expression, Riksdag Act	June 8, 1809 (adopted on September 26, 1810); April 5, 1949; February 28, 1974; November 14, 1991 (e.i.f. January 1st, 1992); February 28, 1974
United Kingdom	Acts with constitutional value: Magna Carta Libertatum, Habeas Corpus Act, The Bill of	June 15, 1215; May 27, 1679; December 16,

of Great Britain and Northern Ireland	Rights, The Petition of Rights  General acts for public interest: European Communities Act, Constitutional Reform Act	1689; June 7, 1628  October 17, 1972; March 24, 2005 (revised at June 1st, 2012)
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*Source: The records were collected by the author*

We can observe a diversity of constitutional norms, thus, in the case of federal states, we discuss about fundamental laws, and in the case of unitary republics about Constitution - France, Poland and moreover in monarchies we can find either constitutional acts - Britain and Sweden, or Constitutions of Kingdoms - the Netherlands and Spain.

The Constitution is the essential source of law in all legal systems, and therefore of the administrative law. It is the fundamental act of the which organizes state legal system and sets the institutional architecture of the state. Many rules concerning public administration are set out in EU Member States Constitutions.

For example, the Constitution secures the distribution of powers between the president and ministers - art. 8 Constitution of France *“At the proposal of the Prime Minister, President of the Republic shall appoint the other members of the Government and dismiss them.”* Moreover, it can defines the government power over administration - as art. 20 para. 2 of the French Constitution *“The government shall have at its disposal the civil service and the armed forces”*, or as art. 58 of the Constitution of Latvia *“administrative institutions of the State are under the authority of the Cabinet”*. Also, the powers of Prime Minister are stated - in art. 21 para. 4 Latvian Constitution *“Exceptionally, the Prime Minister may preside in place of the President the Council of Ministers, under the express delegation and for a predetermined agenda”*; in art. 95 of the Constitution of Italy *“The President of Council conducts and holds responsibility for the general policy of the Government. The President of the Council ensures the coherence of political and administrative policies, by promoting and coordinating the activity of the Ministers.”*

The Germany's Basic Law on the exercitation of the governmental functions states that the head of government - the Federal Chancellor - is elected by the Bundestag without debates on the proposal of the Federal President. The person elected by the Bundestag, by majority vote, shall be appointed by the President (art. 63). Also, in the same fundamental law we can find out the organization of the federal state,

namely the distribution of powers in the federal state between the federation and the Länder. For example, the Länder has the power to legislate insofar as the Basic Law does not confer legislative power on the Federation (art. 70). Thus, in Germany the exclusive legislative power of the Federation is established - The Länder cannot legislate in areas reserved exclusively to the Federation, unless there is a federal regulation that gives that power expressly (art. 71) and also the concurrent legislative powers of the Länder and Federation - Land can legislate only if the Federation has not exercised its legislative power by enacting a law (art. 72). As it concerns the Länder's executive function, the basic law states in art. 83 and 84 that the Länder can execute federal regulations only if the Basic Law does not provide or establish the contrary.

In addition, the Constitution can determine who has the legislative initiative, for example, in the Latvian Constitution, art. 47 establish that "The President has the right to initiate legislation" and in art. 65 that the "Draft law may be submitted to the Saeima (Parliament a.n.) by the President, the Cabinet and committees of Saeima, by not less than 5 members of the Saeima, or, in accordance with procedures and in the cases stipulated by the Constitution, by one-tenth of the electorate". The French Constitution in art. 39 para. 1 stated that "The legislative initiative belongs to both the Prime Minister and members of Parliament".

As far as the public administration structure is concerned the territorial division is established by the Constitutions, for instance art. 72 of the French Constitution states that "*The territorial communities of the Republic shall be the Communes, the Départements, the Regions, the Special-Status communities and the Overseas Territorial communities [...]*" and art. 114 of the Italian Constitution: "*The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State [...]*". The local powers are also set out in art. 117 of the Italian Constitution "*Legislative powers are held by state and region in accordance with the Constitution and with the constraints deriving from EU legislation and international obligations.*"

The guarantees of a democratic state and social organization were also established in the German Basic Law Art. 28 "*The constitutional order of the Länder must comply with the principles of republican, democratic and social state governed by the rule of law [...]*". Moreover the rule of law is enriched by art. 31 which establish that the "*Federal law shall take precedence over the Länder law*".

### 3. The Constitutional Principles Applicable to Public Administration

The Constitution defines the general legal principles such as equality - art. 3 of the Italian Constitution: “*All citizens have equal social dignity and are equal before the law without discrimination [...]*”; art. 91 para. 1 of the Constitution of Latvia: “*All people in Latvia are equal before the law and the courts*”; art. 3 German Basic Law: “*All people are equal before the law*”. Also the German Basic Law regulates - in art. 1 - the principle of inviolability of human dignity which the state authority must respect and protect.

The principle of legality of public administration, major principle of ensuring the rule of law was distinctively established in the basic laws of the Member States. For example, in Germany the citizens have the opportunity to protect a fundamental right enshrined in the Basic Law (Art. 1-19) or an equivalent one to a fundamental one established by art. 20.4, 33, 38, 101, 103 and 104, including in front of the Constitutional Federal Court. Thus, unlike other states, where the Constitutional Court is limited to ensuring the constitutionality of laws, in Germany the constitutional action is extended to the protection of fundamental rights by public authorities - the authority which violated a fundamental right can be held responsible not by the administrative courts, but also by the Federal Constitutional Court.

Furthermore, the principle concerning the transfer of powers from the national level to the international one has been granted in different Member States' constitutions, as follows: art. 49bis of the Constitution of Grand-Duchy of Luxembourg set up that the legislative, the executive and the judiciary may be temporarily ceded by treaty to international institutions; art. 24 of the German Basic Law establish that the federation, by law, may transfer sovereign powers to international organizations and the Länder, with the consent of the Federal Government, may transfer sovereign powers to transfrontier institutions in neighbouring regions.

Among the Member States that have clearly stated the principles applicable to local public administration we can mention Belgium, which in art. 162, guarantees the following principles:

- the direct election of the members of provincial and municipal councils;

- the attribution to provincial and municipal councils of all that is of provincial and municipal interest, without prejudice to the approval of their acts in the cases and in the manner that the law determines;
- the decentralisation of competences to provincial and municipal institutions;
- the public nature of provincial and municipal council meetings, within the limits established by the law;
- the publicity / transparency of accounts and budget;
- the intervention of the supervisory authority or of the federal legislative power to prevent the law from being violated or public interests from being harmed.

#### **4. Instead of Conclusions**

Throughout our research we demonstrate that there are no general provisions suitable for all constitutions of the Member States. Even if each state established separate organization and operation of its authorities, we can identify common principles underlined in the constitutional texts. As we have presented, the principle of equality is one of the most common principles, together with the rule of law.

Within the European Union there is no model of public administration to follow, each member states constitute their own model according to the requirements of its national and local communities. By presenting different administrative systems (federal, unitary, regional, republic and monarchy) we managed to reveal how different but also similar they are in principles. Even if there is no European systemic model the public administration principles are almost the same in the members states.

## **5. References**

\*\*\* The Constitution of the Kingdom of Belgium accessed on <http://www.legislationline.org/documents/section/constitutions>.

\*\*\* The Constitution of the French Republic accessed on <http://www.assemblee-nationale.fr/connaissance/constitution.asp>.

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\*\*\* The Constitution of the Italian Republic accessed on <http://www.legislationline.org/documents/section/constitutions>.

\*\*\* The Constitution of the Republic of Latvia accessed on <http://www.legislationline.org/documents/section/constitutions>.

\*\*\* The Constitution of Grand-Duchy of Luxembourg accessed on <http://www.legislationline.org/documents/section/constitutions>.