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Titolo della tesi di dottorato:

*Verso una giurisdizione specializzata.
I convergenti percorsi dei sistemi europei di giustizia
amministrativa.*

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ABSTRACT IN LINGUA INGLESE

Moving towards a specialized judicial process and specialized courts. The converging pathways taken by the European administrative justice systems.

The administrative justice systems in the various European countries developed gradually, primarily outside of a rational, organic overall scheme, in order to meet the contingent requirements of society, as the “Rule of Law” principle gradually emerged and this principle gave rise to the consequences that the administrative system, in its organisation and actions, is subject to law, and that this subordination could only be sure if control were exercised by a court and provided that the citizens could bring cases before this court.

Though affected by the specific conditions created by each national experience, it can be observed that the construction of the administrative justice systems in the various European countries took place over the course of the 19th and 20th centuries in accordance with two key models: the monistic and dualistic model. In the first one, disputes involving private party and the public sector, operating in an authoritative capacity, are assigned to the same court which has jurisdiction over disputes involving solely private parties; in the second one, administrative disputes are assigned to a special court: the administrative court.

The gradual construction of each national administrative justice system is and will always be continuous, in order to meet ever-changing social and economic requirements, in accordance with the new conception of the relationship between citizens' freedom and authority wielded by the state and other intrastate and supranational public institutions which have developed over the last few decades.

One may therefore wonder where the administrative justice systems in the various European countries are heading and what are the factors driving their evolution. Is it possible to identify, over the last few decades, shared patterns in these pathways and any cases of convergence? And if so, what are the causes of these converging pathways?

These are the questions I have sought to answer in the doctoral dissertation which this is an introduction to.

My contention is that the various administrative justice systems in Europe are converging, each one starting from a different position and evolving in a manner determined by factors which are both autochthonous and supranational, leading to a more uniform type of administrative justice system, one which could be referred to as *specialized justice system, or rather general, full, effective and independent, such as the ordinary justice system*; expressed more concisely, we can call it *specialized “ordinary” justice system*, in which many of the differences between the monistic and dualistic traditional archetypes seem to be weakening and, in many ways, disappearing. Bearing in mind that when I use the word “justice system” it is my intention to refer both to its structural and functional meanings, in other words both to the structure and the organisation of judicial power, and to the process and mechanisms involved in judicial review. And underlining that the shared point of arrival of these various national pathways which start from different positions, is made increasingly uniform in terms of its salient features, above all on account of the

homogenising influence on the national administrative judicial reviews of European Community law, which has also constituted the main driver and catalyst for convergence along this pathway.

In other words, it seems to me that the monistic administrative justice systems and the dualistic administrative justice systems have, over the last few decades, converged, chiefly due to the impetus of the European legal system, leading towards a *specialized administrative justice system which is complete, in the same way as the ordinary justice system is*, rendered very homogenous by European Community law, because monistic systems are increasingly “specializing” their “ordinary” judicial process and “ordinary” courts, whilst, for their part, the dualistic systems are increasingly “de-specializing” and “ordinarizing” their special judicial process and special courts. With the result that many of the reasons for the traditional contrast between the monistic model and the dualistic model no longer apply. At the same time this is helping to give rise to the new figure of the administrative judge, who could nowadays be defined as the ordinary judge with regard to administrative disputes or otherwise as the natural judge with standing to rule on the exercise of public function: “specialized” in rulings with regard to administrative disputes and “ordinary” in respect of general jurisdiction to deal with the cases, in respect of full powers and the variety and self-sufficiency of remedies with which he can and must protect all the person's substantive claims, and in respect of independence from executive power.

In order to support this argument, I felt it was necessary to examine the evolution – from the roots of their formation up to modern times – of the administrative justice systems in France, England, Germany and Italy, to each of which one chapter is dedicated, with brief references in a single, concise chapter intended to describe the most important historic events and the current salient features of the systems in Austria, Belgium and Spain.

The “vertical” discussion of the development of the aforementioned national legal experiences is supplemented by a “horizontal” illustration sharing a common thread, namely the investigation into what to me seems to be the most important causes of the rise in Europe of this *new homogenous “complete” form of specialized administrative judicial review applied by specialized courts*.