

CAN ADMINISTRATIVE LAW BE TAUGHT IN ENGLISH? A PROPOSAL FOR THE ENVIRONMENTAL LAW COURSE

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ABSTRACT:

Given the relevance of linguistic skills in the European Higher Education Area (EHEA), this work proposes a teaching method that allows addressing some of the challenges posed by teaching Administrative Law in English. Specifically, we are referring to the lack of materials or to the *anisomorphism*. This method reaches its full potential in areas of Administrative Law that are strongly communitarized, as it uses European Union Law as a source of content and as a methodological tool. As we will see with Environmental Law course, the utility of the normative and jurisprudential resources that European Union Law offers in English is twofold: they enrich the theoretical-practical content of the course and facilitate the assimilation of the legal terminology necessary to understand the peculiarities of the Spanish legal system.

KEYWORDS: European Higher Education Area, language skill, European Union Law, Environmental Law

¿SE PUEDE ENSEÑAR DERECHO ADMINISTRATIVO EN INGLÉS? UNA PROPUESTA PARA LA ASIGNATURA DE DERECHO AMBIENTAL

RESUMEN:

Dada la relevancia de las competencias lingüísticas en el EEES, esta comunicación propone un método docente que permite solventar algunos problemas que presenta la docencia del Derecho Administrativo en inglés. Nos referimos, concretamente, a la ausencia de materiales o al *anisomorfismo*. El método adquiere su máximo potencial en ramas del Derecho Administrativo fuertemente comunitarizadas, pues utiliza el Derecho de la Unión como fuente de contenido y como herramienta metodológica. Como podremos comprobar con la asignatura de Legislación Ambiental, la utilidad de los recursos normativos y jurisprudenciales que el Derecho de la Unión ofrece en inglés es doble: enriquecen el contenido teórico- práctico de la asignatura y facilitan la asimilación de la terminología jurídica necesaria para posteriormente comprender las peculiaridades del ordenamiento jurídico español.

PALABRAS CLAVE: Espacio Europeo de Educación Superior, competencia lingüística, Derecho de la Unión Europea, Legislación Ambiental.

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INDEX

1. INTRODUCTION. 2. UNIVERSITY TEACHING IN ENGLISH IN THE EUROPEAN UNION. 3. SPECIFICALLY, TEACHING LAW IN ENGLISH: PROS AND CONS. 4. THE EUROPEAN UNION LAW AS A RESOURCE FOR TEACHING CERTAIN AREAS OF ADMINISTRATIVE LAW IN ENGLISH. 5. SPECIFICALLY, THE CASE OF THE ENVIRONMENTAL LAW COURSE. 5.1 Why this course. 5.2 The importance of resources. 5.3 Structure and methodology. 6. CONCLUSIONS. 7. BIBLIOGRAPHY

1. INTRODUCTION

Teaching in English, or in any non-native language, presents a real challenge for the professor, as it is essential to have adequate language qualifications. On this basis, when the object of learning is Law, the perception is that the challenge is even greater. With a few exceptions (e.g., Public International Law), among the most common problems encountered when teaching legal courses in English are the lack of teaching materials and the so-called *anisomorphism*, as there is no correspondence between concepts and structures in different legal systems.

Despite these difficulties, the European Higher Education Area (EHEA) has made linguistic skills the cornerstone of intra-European mobility, both from an economic perspective (in terms of graduates' employability) and from a political perspective (in terms of integration). As a result, Law, like any other discipline, must adapt to a reality that demands learning in the *lingua franca* par excellence, English. Based on this premise, this paper proposes a method that aims to facilitate teaching Administrative Law in English. The technique is based on transforming European Union Law into a source of content and, simultaneously, a methodological tool.

As we will see, not all Administrative Law is suitable for applying this method. In this regard, the existence of European Union Law resulting from the conferral of competences to the EU in the field that constitutes the course's object is essential. An example will be presented using the Environmental Law course.

2. UNIVERSITY TEACHING IN ENGLISH IN THE EUROPEAN UNION

The European Union is the result of an integration process that began in 1951 with the creation of the European Coal and Steel Community (ECSC). Driven by economic as well as political reasons, France and Germany decided to establish a common market for these raw materials with the aim of ending tensions that had

arisen during World War II and, in a sense, starting the reconstruction of their respective industrial sectors together.

Gradually and progressively, the common market for coal and steel fostered the idea of creating a single market in which goods, services, capital and workers could circulate freely. To achieve this, it was essential to bring the regulations of the Member States of the then European Communities closer together. Over time, these communities assumed competences, conferred by Member States, that allowed them to create a new common legal system and materialize the principle of free movement of production factors. Therefore, at its origin, free movement was an economic principle. It was not until the Maastricht Treaty (1992), with the creation of the European Union, that economic convergence gave way to political integration, and we began to speak of European citizenship or of the free movement of persons.

Despite the logical expectation that the politicalization of European Union integration should have been accompanied by a significant conferral of competences in the field of education, the European Union's action in this area is limited to supporting, coordinating and complementing the educational policies of its Member States. In this regard, Article 165.1 of the Treaty on the Functioning of the European Union (TFEU) states that «The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and complementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organization of education systems, as well as their cultural and linguistic diversity».

Given the EU's power limitations, the education ministers of France, Germany, Italy and the United Kingdom signed the Sorbonne Declaration in 1998, urging the design and development of a European Higher Education System. The goal was to «strengthen and build upon the intellectual, cultural, social and technical dimensions of our continent » through universities. Although the initiative was initially driven at national level, the European Union soon adopted the project as a reference to support, coordinate and complement its Member States education policies.

In 1999, with the signing of the Bologna Declaration, the European Higher Education Area (EHEA) was created with the aim of «introducing a more comparable, compatible, and coherent system for European higher education»¹. Central to the achievement of this objective was the idea of competence-based learning. The European Parliament and the Council define competences as «a combination of knowledge, skills and appropriate attitudes to the context»²; a definition that perfectly represents the need for a commitment to skills-based (rather than content-based) learning that allows for mutual recognition between Member States. For the purposes of this paper, the same document in which the above definition is set out lists «communication in foreign languages», i.e., linguistic competence, as a «key competence». In this regard, it should be understood, as

¹ María SALAS PORRAS (2021:13)

² Recommendation of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning (2006/962/EC).

pointed out by SALAS PORRAS (2021:16), that «knowledge of a language *per se* is not the objective of the EHEA, but rather its purpose is to provide citizens with linguistic capabilities different from their own to ensure intra-European mobility».

Initially, the methods used in higher education to acquire this linguistic competence were mobility (e.g., through the Erasmus Program) and the requirement for students to attain a certain level of a foreign language, normally English, for graduation. However, it seems that the process of acquiring linguistic competences in Spain has entered a second phase: the provision of teaching in English in university degrees. English, in this context, has become a means or technique for learning, rather than the object of learning. Specifically, this technique is known as EMI (English as a Medium of Instruction) and «involves the use of English as a vehicular language for teaching disciplines in countries where English is not the primary language for most of its population»³.

As suggested, «teaching in English not only fulfils the basic goal of achieving general linguistic proficiency but also allows for mastery of the language applicable to the professional field through specific and specialized knowledge in university education»⁴. The latter seems to be the current trend. A trend that benefits not only students and their professional aspirations but also the training of professors and the competitiveness of universities. And this benefits not only in economic terms but also, returning to the beginning of this section, in terms of increased European Union political integration.

3. SPECIFICALLY, TEACHING LAW IN ENGLISH: PROS AND CONS

Unlike other fields of knowledge, whether technical or humanistic, Law is strongly influenced by its national context. After all, it is a discipline that responds to the social, cultural, and political reality of each territory. According to DE LUCCHI and CABRA APALATEGUI (2020:192), this circumstance creates two types of difficulties when it comes to teaching in English. The first is the lack of teaching materials (textbooks, law and case law), especially when it comes to explaining courses that do not have an international or EU dimension. Therefore, the already challenging task of explaining a course in English is compounded by the extra effort of creating *ad hoc* materials. The second difficulty is the so-called *anisomorphism*, as there is no correspondence between concepts and structures that «have a contingent nature and respond to the interests and experiences of each social group»⁵. Indeed, as IBÁÑEZ MARSILLA (2012:1) has pointed out, «many legal concepts lack equivalents in other languages: in legal matters, we give different names in each language to realities that, in many cases, are also different». Given these drawbacks, authors like PUYOL MONTERO (2017:10) question whether it is worth studying Spanish Law in English, for example, Administrative Law. To

³ Julie DEARDEN (2014:2). Actually, teaching in a language other than one's own is nothing new. As is well known, during the Middle Ages and the Renaissance, the language of instruction in universities was Latin.

⁴ Yolanda DE LUCCHI LÓPEZ- TAPIA y José Manuel CABRA APALATEGUI (2020:184).

⁵ *Ibidem*, p. 192.

answer this question, we consider it necessary to make a prior clarification about Spanish Law and, specifically, Administrative Law.

In our opinion, it is currently challenging to speak of purely Spanish Administrative Law, especially concerning certain areas. The progressive conferral of powers to the European Union in some fields has led to a partial communitarisation of this discipline, introducing new regulation, case law and principles. These regulation, case law and principles, in addition to influencing (and sometimes determining) national regulations, take precedence over domestic law. This has occurred, for example, in Environmental Law, Competition Law or Migration Law, among many others. In these areas, there is a common legal framework shared by all European Union Member States. Based on the foundation established by the latter, each Member State constructs and shapes its national regulations.

Therefore, in the case of these strongly communitarized areas of Administrative Law, and returning to PUYOL MONTERO's question, it seems worthwhile to study them in English. Primarily, because students who study these courses in English will have knowledge of regulation, concepts, legal institutions, procedures, case law and principles common to all Member States in the *lingua franca* par excellence. Thanks to this, on the one hand, the employment prospects for our graduates increase significantly, even when dealing with different legal systems. On the other hand, from the European Union integration perspective, it encourages the free movement of workers and consolidates the idea of European citizenship.

4. THE EUROPEAN UNION LAW AS A RESOURCE FOR TEACHING CERTAIN AREAS OF ADMINISTRATIVE LAW IN ENGLISH

Traditionally, certain legal courses, by their very nature, have been considered more suitable for teaching in English. This is the case of Public International Law, Philosophy of Law, or European Union Law. Regarding the latter, we refer in this instance to the general part of European Union Law, whose content consists of the sources of European Union Law, its institutions, different types of regulations or the procedures for creating these regulations.

On the other hand, as we have explained in the previous section, there are other branches of law, such as Administrative Law, which, although traditionally considered «Spanish Law» (and therefore less suitable for teaching in English), have some areas that are strongly influenced by European Union Law. This is to the extent that the latter is either directly applied in our territory (by means of Treaties or Regulations) or indirectly applied when national rules are the result of the transposition of Directives. We have given as examples Environmental Law, Competition Law or Migration Law. In these areas, there is a common regulation that serves as the basis on which Member States subsequently develop their respective national regulations. In fact, when these courses are taught in Spanish, it is logical to dedicate a significant portion of the content to explaining European Union common regulation before referring to national regulation. As we will see in the next section, if these courses are taught in English, the *modus operandi* remains

the same: the first part of each lesson would analyse European Union common regulation and, subsequently, the specific features of the Spanish legal system would be addressed. The difference is that, if taught in English, the employability of graduates increases, both within and outside of Spain, and the level of European Union integration is enhanced.

Lastly, it is also necessary to mention those legal courses that are less communitarized, such as Civil Law or General Administrative Law itself. In these cases, it may make less sense to teach them in English. Focusing on General Administrative Law, it must be considered the difficulty and impracticality of teaching (and learning) the legal framework of administrative procedures or administrative jurisdiction in English.

At this point, it is worth asking what determines whether a specific area is influenced by European Union Law, as this will help to determine which courses are more suitable for teaching in English. The answer lies in the system for conferring powers to the EU. As it is well known, the European Union is not a sovereign entity, but a supranational organization created by a group of states that have voluntarily decided to confer certain competences to it to achieve common objectives. According to the founding treaties, there are three modalities of competences: exclusive; shared and supporting competences.

When an exclusive competence is conferred to the EU, such as competition rules for the functioning of the internal market, only the European Union can legislate and adopt binding acts. Member States are able to do so themselves only if given the powers by the EU to implement these acts. In the case of shared competencies, such as environment, both the European Union and Member States can legislate and adopt legally binding acts. However, Member States exercise their own competence where the EU does not exercise or has decided not to exercise its own competence (Article 2.2 TEU). In short, shared competences work in such a way that when the European Union legislates on a specific matter, it limits the ability of Member States to regulate the same matter autonomously. Finally, in the case of supporting competencies, such as education (see Section 1), the EU can only intervene to support, coordinate or complement the action of Member States.

Considering the explanation above, it can be deduced that areas where the EU has exclusive competences (e.g., competition) or shared competences (e.g., environment) are those in which is more suitable to explain its legal regulation in English. And it is more suitable because, to a large extent, the two difficulties that existed for teaching law in this language are alleviated: the lack of teaching materials and *anisomorphism* (see Section 2).

Regarding the lack of teaching materials, it is worth noting that all European Union Law is published in the official languages of the EU, including English⁶. Something similar applies to the case law of the Court of Justice of the European Union. Although judgments are not always available in all official languages, at

⁶ EUR-Lex is the online gateway to EU Law. It provides the official and most comprehensive access to EU legal documents. It is available in all of the EU's 24 official languages and is updated daily. (Disponible en: <https://eur-lex.europa.eu/homepage.html>).

least the English and French versions are usually available⁷. Finally, and not least, it is well known that many reference textbooks on European Union Law are published in English⁸. As a result, the professor has access to a wide and varied range of resources in English on the core of the course.

As for *anisomorphism*, it is necessary to recognize that, even in areas regulated to a large extent by European Union Law, each national law has its peculiarities. However, if we compare how it would be to teach the general part of (Spanish) Administrative Law in English with (Spanish) Migration Law in English, in the latter the aforementioned phenomenon is mitigated, since the basic objectives, concepts and institutions are common to all EU Member States. Furthermore, the fact that both the professor and the students learn in English the common EU regulation will facilitate their understanding, also in English, of the peculiarities of the Spanish legal system.

5. SPECIFICALLY, THE CASE OF ENVIRONMENTAL LEGISLATION

Having explained, in general terms, the advantages of teaching university courses in English and having analysed the feasibility of offering certain legal courses in this language, it seems appropriate to consider the possibility of putting this idea into practice in a specific course. The chosen one is Environmental Law.

5.1 Why this course

In line with the idea presented in this paper, the Environmental Law course aligns perfectly with what, in our opinion, is an essential requirement for a legal course to be taught in English: the existence of common EU regulation in this field. Indeed, Spanish environmental legislation is heavily influenced (and even determined) by EU law. The reason, as previously explained, is that environment is a shared competence [Article 4(2)(e) TFEU]. In fact, it is one of those shared competences in which the European Union has «burned» a large part of the field available to the Member States, giving rise to an area in which the EU legislator has become the great protagonist. With articles 11, 191 and 192 TFEU as its competence title, the European Union has coined its own environmental principles, established action programmes, developed strategies and approved regulations in areas as air quality, noise, genetically modified organisms, waste management, environmental assessment and environmental damage, among others. This set of instruments gives rise to a European Union Environmental Law that provides ample content for the Environmental Law course.

5.2 The importance of resources

The statement that EU Environmental Law provides ample content for the Environmental Law course is not entirely accurate. For the purposes of this work,

⁷ In addition to EUR-Lex, the case law of the Court of Justice of the European Union is compiled on the institution's own website (Disponible en: https://curia.europa.eu/jcms/jcms/j_6/es/)

⁸ Vid., between others, Paul CRAIG and Gráinne DE BÚRCA (2020).

it would be more appropriate to say that EU Environmental Law provides content *in English* for the Environmental Law course.

As mentioned earlier, all EU law is published in English: foundational Treaties that contain the basis of environmental policy⁹ and secondary legislation on the matter¹⁰. The same applies to environmental strategies¹¹ and action programs¹². Therefore, both the professor and the students, having access to both the Spanish and English versions of the same legislation or documents, can create glossaries of legal terms in English, both general and specific to the field. Moreover, there is a wealth of diverse literature in English on EU environmental law which enables the professor to prepare a significant portion of the theoretical content of the course¹³. Specifically, the content not related to the particularities of Spanish law.

In terms of case studies, the case law of the CJEU in English concerning environmental matters becomes an essential resource for students to understand the practical application of the studied regulations and the interpretation provided by the CJEU. Moreover, as many of the judgments will deal with preliminary rulings or actions for failure to fulfil obligations by Member States, the analysis of these rulings will provide students with an understanding of national environmental law in English and its compatibility with EU law.

Lastly, and on a more transversal note, it is essential to highlight the importance of using audiovisual resources when teaching in English. As some authors have suggested, tools such as PowerPoint or Prezi allow students to follow the explanations without the need for excessive auditory comprehension effort. If such resources are commonly used when teaching in Spanish, they seem to gain relevance in English-language lessons¹⁴.

5.3 Structure and methodology

⁹ Treaty on the Functioning of the European Union, signed on 13 December 2007.

¹⁰ Between others: Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe; Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise; Directive 2009/41/EC of the European Parliament and of the Council, of 6 May 2009, on the contained use of genetically modified micro-organisms; Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms; Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment and Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Biodiversity Strategy for 2030. Bringing nature back into our lives [COM/2020/380 final].

¹² Decision n.º 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'.

¹³ Josephine VAN ZEBEN & Arden ROWELL (2021); Peter G.G. DAVIES (2017) y Martin HEDEMANN-ROBINSON (2007).

¹⁴ José María PUYOL MONTERO (2017:20).

Starting from the premise that the content of the Environmental Law course will revolve around EU environmental law, the focus will naturally be different from the traditional Environmental Law course taught in Spanish. It will be a more EU-oriented approach, but not fundamentally different in terms of essential content. In this sense, we agree with PUYOL MONTERO that «when a professor is preparing a course in English, something indicates that a different course must be designed»¹⁵.

The design of the Environmental Law course is based on making EU environmental law the reference for both content and methodology. The introductory lessons will primarily aim to explain the EU's environmental policy, including the precautionary, preventive, rectification at source, and «polluter pays» principles; action programs, with a special emphasis on the one currently in force (7th); and major strategies, such as the European Commission's Biodiversity Strategy for 2030. Once the general aspects of EU environmental law have been analysed, the final part of these introductory lessons will focus on presenting the environment regulation in the Spanish Constitution. This will encompass topics ranging from the distribution of powers between the State and Comunidades Autónomas to the analysis of Article 45 of the Spanish Constitution.

We believe that, both for professors and students, it will be more straightforward to teach and attend these introductory lessons in English if the general aspects of EU environmental law are addressed first. Once familiar with the legal terminology specific to this field, the focus will shift to explaining the particularities of Spanish law. The cornerstone of this teaching design is the existence of English-language legal sources, textbooks and case law provided by EU environmental law. Therefore, the course aims to develop specific language skills through the analysis of direct resources. This is why it has been previously stated that EU environmental law is both a source of content and a methodological tool for teaching the course in English.

For example, in the lesson dedicated to Protected Natural Areas, the first part will present the regulation contained in Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive). Thus, students will have the opportunity to study what the Natura 2000 network is, the procedures Member States must follow to include their natural areas in this network and what prohibitions and limitations apply. Once students are familiar with the terminology specific to this lesson in English, the second part will focus on the analysis of Protected Natural Areas in Spain, which are regulated by Ley 42/2007, de 13 de diciembre, del Patrimonio Natural y de la Biodiversidad. Ultimately, this law is the result of transposing the Habitats Directive, similar to how Ley 21/2013, de 9 de diciembre, de Evaluación Ambiental, results from the transposition of Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment¹⁶. Therefore, it can be asserted that the content of the course does not change fundamentally; it is merely

¹⁵ *Ibidem*, p. 15.

¹⁶ In the same vein, and in preparation for another lesson in the course, Ley 26/2007, de 23 de octubre, de Responsabilidad Medioambiental is the result of transposing Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remediation of environmental damage.

the teaching method that changes to take advantage of English-language resources provided by EU law.

6. CONCLUSIONS

1. In the legal field, the EHEA's commitment to university teaching in English has been hampered by the very nature of the discipline, which is strongly determined by the cultural, social and political reality of each State. These circumstances mean that, with few exceptions (e.g. Public International Law), the professor who teaches legal courses in English encounters problems such as the absence of teaching materials or the so-called *anisomorphism*, as there is no correspondence between the concepts and structures of different legal systems. This is the case for General Administrative Law.

2. However, this paper has attempted to demonstrate that certain specific areas of Administrative Law are both viable and advisable to teach in English. We are referring to those areas that are heavily influenced by EU law, such as Environmental Law, Competition Law, or Migration Law, among others. In these cases, the absence of teaching materials in English is overcome by the normative, case law and bibliographical resources provided by EU law in English. Furthermore, the issue of *anisomorphism* is mitigated because the basic regulations in these sectors constitute a common substrate among all EU Member States.

3. With the presentation of the Environmental Law course an attempt has been made to demonstrate that EU Law can simultaneously serve as a source of content and a methodological tool for teaching a course in English. On the one hand, EU environmental law will be studied by students in the first part of each lesson. After this first phase, and from a methodological point of view, the acquisition of general and specific legal terminology in English through direct resources (EU regulations, case law and bibliography) will help students to understand, with greater ease, the peculiarities of the Spanish legal system.

4. Consequently, the answer to the question of whether Administrative Law can be taught in English must be contingent. Regarding the general part of Administrative Law, its essentially national nature suggests that it might be both impractical and excessively challenging for the teacher. However, based on the arguments presented previously, in areas of Administrative Law strongly influenced by EU law (such as Environmental Law), the answer should be affirmative.

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