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The principles of the global law of public procurement*

Os princípios do Direito global da contratação pública

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Abstract: The paper analyses the effects of globalization on public law, especially in public procurement. In this framework, the article introduces the study of Global Administrative Law as a new developing field that still lacks legitimacy due, among other factors, to the absence of a global legislative body. Finally, it analyses the main difficulties about establishing principles to support the building of Global Administrative Law and examines the progress on the matter developed in the European Union.

Keywords: Globalization. Principles. Public procurement. Global Administrative Law. European Union.

Resumo: O artigo analisa os efeitos da globalização no Direito Público, especialmente na área da contratação pública. Nesse cenário, o artigo apresenta o estudo do Direito Administrativo Global como um novo ramo em desenvolvimento que ainda carece de legitimidade devido, entre outros fatores, à ausência de um órgão legislativo global. Finalmente, são analisadas as principais dificuldades em estabelecer princípios para dar apoio ao edifício do Direito Administrativo Global e são examinados os avanços na matéria desenvolvidos na União Europeia.

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Palavras-chave: Globalização. Princípios. Contratação pública. Direito Administrativo Global. União Europeia.

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1 Introduction

Globalization is a phenomenon that has also reached Public Law. In fact, reality shows us that in certain areas of Administrative Law there are rules and acts with a claim to supranational validity. These are rules that are drafted by questioning the classical theory of the sources of Law and the system for the production of rules. Because Global Administrative Law is "In fieri", it is, in my opinion, a principal Law. It is a Law under construction; a Law that ensures that the global public powers are exercised to serve the global general interest in accordance with legality. There is still no global Public Administration, or a global Executive Power, or a global Judiciary. We also lack a global Constitution. However, reality evidences that in some sectors –especially in public procurement – the general principles can be extremely helpful for building a Global Administrative Law for administrative procurement that is based precisely on the tenets of Rule of Law.

The absence, on occasions, of legitimacy in these new sources of Law, sometimes consisting of groups of experts or specialists in certain areas, who meet globally, or also by traditional public and semi-public bodies and even of private entities, requires in these early stages, that this new legal-administrative building be erected on solid foundations. In terms of contracts, it is the public or global supranational Bodies, through objectivity, impartiality, advertising, competition, equal treatment, prohibition of discrimination on the grounds of nationality, which have built a European legal system that, due to the characteristics of integration in the European community, oblige the Member States.

The purpose of this paper is to reflect on the topical phenomenon of Global Administrative Law, focusing specifically on the public procurement sector. This is a sector where the Law that governs it is actually of prudential content and results from the force of integration (in this case of Community integration). Furthermore, and it is important to underline this, the general principles governing the system of public procurement in Europe originate from a methodology of open, dynamic and complementary thought. In this sense, the principles that will be analysed stem from the same base as a phenomenon of integration where freedom, competition, equal treatment, non-discrimination, transparency, fairness, and objectivity preside over the entire regulatory system of administrative procurement within the EU.

2 Global Administrative Law

Today, the existence of Global Administrative Law is, without the shadow of a doubt, a reality.[1] Little by little, it has entered the traditional sectors of Internal or National Administrative Law. This is so, among other reasons, because the categories and the institutions of Administrative Law are not limited to certain specific, concrete space-time coordinates. Rather, it is a question of concepts and categories with universal validity that could have a different meaning or intensity depending on the model of State we are in. For example, procurement contracts, those signed between public sector bodies, in their general format and in their specific articulation, from their origin usually present certain clear common features that precisely demonstrate the existence of this legal-administrative category.

Public bodies, to use a very wide term which includes all public administrations, dependent entities, as well as corporate bodies and other agencies that handle public funds, through advertising and competition, usually summon companies to carry out activities of general interest that neither the applicant or institution itself is in a position to carry out on their own, nor would they probably need to. The European Union, Mercosur, the United Nations, the World Bank, the International Monetary Fund, the Inter-American Development Bank and other bodies and agencies of supranational dimension contract companies to carry out public works or services following a typology that although originating in Internal Administrative Law, today it is a reality in the Global Administrative Law for public procurement.

The problem that this Global Administrative Law presents today is that it is an "In fieri" law, which is being developed little by little. It still suffers from a disturbing lack of legitimacy due to the absence of a global Parliament, a global Government, and a global Court. For this reason, this incipient Global Public Law operates, as is logical, through principles that project the clause of Rule of Law, in an attempt to prevent economic rationality or technical rationality eventually from becoming the primary and most relevant source for this Global Administrative Law.

At this point, the case of public procurement is paradigmatic because, as discussed in this paper – which is surely a pioneer study in the matter, at least in Spanish – the main supranational and global instruments in the field of procurement have been built precisely in the light of principles: the principles of non-discrimination, of advertising, and free competition. These are principles that are the expression of the obligation public bodies have for managing public funds. They must act with transparency, by promoting equality and awarding the contract to the best tender for

[1] CASSESE, Sabino. *La globalización jurídica.* Madrid: Marcial Pons, 2006; ESTY, D. C. Good Governance at the Supranational Scale: Globalizing Administrative Law. *The Yale Law Journal*, n. 117, 2006; BALLBÉ, Manuel. El futuro del Derecho Administrativo en la Globalización. *Revista de Administración Pública*, n. 174, 2007.

the public interest, which is always the central element that hovers over and governs the entire applicable legal system. That is to say, in the area of public procurement, the principles have been the basis for the regulations that were developed subsequently. The case, for example, in the European legal area, of EC Directives on the matter now excuses us from further comments.

In spite of the fact that Global Administrative Law has to date not fulfilled the role expected of it (the legal management of power for the freedom of all human beings globally), we cannot ignore that in the overall legal reality in the global legal space, a whole series of facts and regulations have been taking place. Perhaps too timidly and probably too slowly, and in a fragmentary manner, they have been witness to partial administrative regulations at a supranational level. However, it is in the area of public procurement where, in my opinion, the development of Administrative Law offers greater solvency, precisely because it was built on the foundations of the traditional principles of public procurement, which are virtually common to almost all the world's legal systems inspired on Civil Law.

The phenomenon of globalization, unstoppable in the economic field, today has already entered all the social sciences without exception. As regards Public Law, we often witness the existence of sectors from what is broadly referred to as administrative activity. They tend to be stuffed with transnational regulations or, rather, transgovernmental ones that oblige Administrative Law scholars to bear this new reality in mind. This is the case, for example, of public safety, of the regulation of energy, of telecommunications, of immigration, of the environment, of that which is referred to as development aid and very particularly, of public procurement. This is so, among other reasons, because today interdependence and intergovernmental cooperation teach us that the solution to many problems of a public dimension has to be sought through this new mode of thinking, which is open, plural, dynamic, and complementary, and is referred to as globalization.

This new outlook strongly affects the principles that Administrative Law is based on. It is true that in our area of study there coexist two legal traditions that are being affected by globalization. Of course, the French style legal-administrative system is more affected than the system of "Rule of Law" inspired on Common Law. But, in any case, both systems have to be updated to the new reality. Moreover, concerning principles, the foundations of Rule of Law on which both legal structures have been erected, now have a specific relevance, because we cannot hide the fact that these new forms of global public activity cannot and must not escape the legal control that legitimates public action. In the exercise of these regulatory powers, which have different protagonists, even of a private nature, it is necessary to ensure techniques to prevent the temptation to elude control from becoming the main feature of the new global Administration that exercises its activity in the global legal area. For this reason, in the early stages of this still nascent Global Administrative Law, case law and

especially the principles of Law on which this magnificent legal-political structure was erected, constitute a new Universal Public Law. As professor Meilán shrewdly points out, it is already a prudential Law. "Mutatis mutandis," the same is happening as in the origins of Administrative Law in France. At the time it was the State Council which gave birth to Administrative Law through its famous *arrets*; today it is the Sectoral Courts at a transgovernmental or global level, which little by little are developing a case law doctrine that, now as before, is based on principles of Law.

It is a well-known fact that while in the European continental system, the control of administrative activity was placed in the hands of the State Council, a public entity with a judicial nature, and the Public Administration acts subject to a Law other than Common Law for ordinary legal personalities, full of privileges and prerogatives, at the service of general interest; on the opposite shore, quite literally, the Administration was considered a legal personality that was more subject to the Law interpreted by the ordinary Courts. In both cases, logically, the Administration was subject to legislation and Law. In Common Law, slowly but surely, procurement contracts started to be subject to rules belonging to a system that assumes that the existence of public funds obliges having a legal regime that adapts to that characteristic. Private contracts are governed by the law of freedom of choice with the limitations established by the corresponding Codes. Procurement contracts, on the other hand, because of the existence of public funds, are subject to the principles of advertising, objectivity, fairness, competition, equal treatment, and transparency. These principles are applicable today – because of the force of European Public Law – to all countries members of the European Union, whether they are of the Common Law or French tradition.

In this context, the experiences of Global Administrative Law in different sectors, such as that of human rights, international trade, culture, agriculture, public procurement, sports, among others, all with a universal dimension, show us a set of resolutions of a legal nature and administrative norms and practices that by all means go beyond national frontiers. In fact, from the principle of legality, to the separation of powers, including the predominance of the fundamental rights of people, without losing sight of the importance of pluralism, rationality, transparency, good governance, of accountability, as well as of the establishment of an effective system of checks and balances, we find principles and criteria from Rule of Law that allow us to speak of a Global Administrative Law with a primary basis. A primary basis, I insist, that is obvious in procurement matters.

Undoubtedly, one of the dangers envisaged when we approached the study of Global Administration, of the global judicial-administrative area and, especially, when studying Global Administrative Law, is how easily these new legal and structural realities can escape the control or the system of accountability that should define a true and genuine democratic Administration. For this reason, now that we perceive the emergence of this new Administrative Law where there is still "In fieri" a new

global Administration that operates in the new global judicial area, it is crucial, as of now, that the principles on which this new legal-public reality will rest on are clearly inscribed in the postulates of Rule of Law. In matters relating to public procurement, we are faced with a complex problem, because in the European area it turns out that the principle of equal treatment is often overlooked in favour of national companies for different "reasons," that can range from the promotion of the national industry to the protection of the domestic economy.

In this respect, professors Kingsbury, Krisch, and Stewart are aware that there could be certain global regulations that could affect States in different ways, even going as far as questioning the system of Public International Law. To avoid this pitfall, these professors believe that the intergovernmental regimes should build standards of Administrative Law and general legal techniques that the national governments would have to adapt to in order to ensure that the principles of Rule of Law are respected.[2] In procurement matters, the principles are the keystone of the sector. Without principles, which moreover should be global, there can be no global system for public procurement.

It is true that today emphasis is placed on accountability, on transparency, on rationality, on evaluation, on legality and, along with other paradigms, on participation. These are the new principles that are in vogue in studies on Global Administrative Law. However, while it is very important for the forms of production of administrative acts and standards of Global Administration to be inspired on the supremacy of these principles, we cannot forget that Rule of Law also places, like an essential conquest, primary focus on the fundamental rights of individuals and on the separation and balance of powers. When studying the principles, if we only pay attention to criteria of efficiency or efficacy and we overlook the way in which global administrative power has an impact on the improvement of the conditions of citizens, we could fall into a merely functionalist view of Global Administrative Law.

To a certain extent, the crisis of regulation with regard to financial activity on a national level in some States highlights the importance of a global regulation that can perform and arrange its role in response to phenomena that are in themselves global, such as the financial system and the economy. The control of the economy by Administrative Law is simply the guarantee that is necessary for the agents to work in a climate of trust; that the market system functions in a context of rationality and balance. Regarding procurement and public funds, the relationship between Law and Economics is clear. Therefore, in these cases, technical rationality must be integrated in the framework of the postulates of Rule of Law, which is where the principles

[2] KINGSBURY, B.; KRISCH, N.; STEWART, R. B. El surgimiento del Derecho Administrativo Global. *Revista Argentina del Régimen de la Administración Pública,* n. 3, 2007.

of equality, transparency, advertising, objectivity, impartiality, and public interest originate. The issue, therefore, will focus on projecting all the force of Rule of Law on Global Administrative Law without forgetting that, indeed, today administrative action, precisely because of the force of Rule of Law, needs to be expressed in terms of transparency, participation, responsibility, rationality, and permanent evaluation.

Global Administrative Law exists because there is a global administrative action. And there is a global administrative action because over time a set of global regulation structures – not necessarily of a strictly public composition – have been gradually built. These have produced acts and regulations projected in an administrative system area that we refer to as global. Professors Kingsbury, Krisch and Stewart maintain that this global administrative area is multifaceted because within it there act, as subjects that produce regulations, administrative institutions of a classical nature; structures such as NGOs or legal entities operating as companies which gain administrative relevance to the extent that they lay down rules of public importance.[3] I insist that this reality once again allows us to consider the possibilities of the objective and physical conception of Administrative Law, and the crucial importance of administrative action as the main axis of the actual concept of our area of study. In matters of procurement, we find the public procurement Agreements of the WTO, the Model Law of public procurement of the United Nations, the Regulations on public procurement of the North American Free Trade Agreement, the Working Group for government purchasing of the Free Trade Area of the Americas, the Protocol on Mercosur tenders, the EU Directives on public procurement, the Agreements and Treaties signed between the European Union with Chile and Mexico and their provisions regarding procurement, the Regulations on public procurement in the context of the Free Trade Agreement between the European Union and Mexico and other Agreements and Treaties signed by the European Union.

This is, no doubt, a controversial matter because the entire doctrine by no means admits that there could be an administrative regulation issued beyond organs or structures that are not formally administrative on a state, national, regional or sub-national level. However, reality shows that in the supranational sphere, there are organs such as the OECD, the IMF, the Basel Committee, the International Financial Action Task Force, or the WTO, to name a few, that in a relatively short period have established regulatory regimes of an administrative nature with legal importance and repercussion at a supranational level. In the environmental sphere, no doubt one of the most representative ones of Global Administrative Law, it could be said that today there is a global administrative system of regulations often created by structures and

[3] KINGSBURY, B.; KRISCH, N.; STEWART, R. B. El surgimiento del Derecho Administrativo Global. *Revista Argentina del Régimen de la Administración Pública*, n. 3, 2007.

organisations that came into being as a result of major global declarations on issues such as emissions trading or clean development derived from the Kyoto Protocol. In the area of contracting, they key to knowing if we are before Global Administrative Law lies in the existence or not of publicly relevant funds, either because they are public institution funds, or because they are funds allocated to matters of public importance.

Another characteristic I would like to highlight in this paper on the principles of Global Administrative Law applied to public procurement, refers to the fact that, without its origin being due to a previous systematization, we are before a global administrative action and before public, public-private, and even private bodies that perform regulatory tasks to objectively serve the general interest. Reality, which we could label as stubborn and obstinate, to use a not too scientific term, reveals that in the global legal-administrative area there is a whole series of regulations of this nature that strongly affect the traditional understanding of Administrative Law. For this reason, now, when we explain Administrative Law at university faculties, we have to introduce students to Global Administrative Law, especially in matters of Regulatory Law and to the contents of certain sectors of Administrative Law, such as Environmental Law, Public Procurement Law, Security Law, or Maritime Law.

The Europeanization of Administrative Law is a reality today. However, it is a reality which is not completely accepted by the Member States nor internalized by a wide number of legal operators from EU states. Actually, one of the reasons for this situation lies in the Member States' resistance to sharing sovereignty spaces and an emergent nationalism that prevents the global legal area from being the reality that it should be after so many years of communal background. In any case, it is an unstoppable legal process which, with positive and negative aspects, is slowly penetrating in the European legal conscience. The Europeanization of Administrative Law is a process that is dealt with through regulations and through directives. To the extent that both sources of Law are of mandatory observance in the EU Member States, Community Administrative Law is becoming more familiar and is being used more by the Courts of Justice of the Member States. These legal regulations have been training the Administration's sectoral action, which is the field of action of European administration that contains the main public policies of the EU, namely: agriculture, fishing, safety, social policy, among others. In procurement matters, although the directives are quite clear, the fact cannot be hidden that the principle of equal treatment is still a fantasy in the light of the protectionism that exists in certain sectors, and in view of the preference for national companies when awarding major procurement contracts. On the other hand, when it is the EU, and not the Member States that carries out the tender selection process, then the principles of European law are applied smoothly.

3 General principles and Global Administrative Law

Today, Global Administrative Law is a principal Law, a Law that progresses based on the principles of Law that, in addition to providing the general criteria for constituting the institutions and the legal-administrative categories, guarantees that the postulates of Rule of Law illuminate this new reality. Actually, in Administrative Law, principles have always been fundamental. This is probably because, as it is a relatively recent Law, at least in its scientific configuration, it has served as a guide for its design and development.

In effect, the consideration of the general principles of Law in the field of Administrative Law can be carried out in ways that are quite different and that tend to different points of view. For example, it is possible to analyse its condition as a source of Law and explain which are its special features projected on our area of study. It is also possible to specifically study its nature as an informing and transversal element of the entire legal-administrative system. Similarly, emphasis can be placed on its connection with its ethical dimension and on its projection on the area of values.[4] We can stop after the analysis of the political principles that preside over the social state and democracy under Rule of Law,[5] or go on to focusing on the study of aphorisms, on argumentation techniques, on the rules of interpretation or on certain procedural criteria. As Santamaría Pastor points out, there is a plurality of meanings and approaches with regard to the general principles that make it necessary to clarify and specify the object under consideration.

Subjecting global public power to Law to a great extent happens thanks to the existence of a series of principles that shed their light and enable us to see problems in their real and fair dimension. They are the atmosphere that provides oxygen for the global administrative legal system. The case law of some national Courts and of some global Courts, such as the WTO Court, shows that the general principles are the result of the legal genius of the construction of Rule of Law and the essence of the entire legal system. In the context of Administrative Law, the general principles are the criteria that inspire the entire regulatory system of our area of study. Thus, the general principles, which are the essence of the system, will always help us to develop that fundamental task of ensuring and guaranteeing that the public power at all times moves and acts in the context of the Law. Furthermore, the inspiring nature of the system leads us to find in the principles the guides, the beacons, the reference

[4] RODRÍGUEZ-ARANA MUÑOZ, Jaime. Caraterización constitucional de la ética pública (Especial referencia al marco constitucional español). *Revista de Investigações Constitucionais*, Curitiba, vol. 1, n. 1, p. 67-80, jan./abr. 2014. DOI: http://dx.doi.org/10.5380/rinc.v1i1.40248.

[5] Those principles were described in another paper: RODRÍGUEZ-ARANA MUÑOZ, Jaime. Dimensiones del Estado Social y derechos fundamentales sociales. *Revista de Investigações Constitucionais*, Curitiba, vol. 2, n. 2, p. 31-62, maio/ago. 2015. DOI: <http://dx.doi.org/10.5380/rinc.v2i2.44510>.

points necessary so that Administrative Law does not become regulation machinery at the service of whatever government happens to be in power, with no support besides the written norms and the customs that would be applicable in their absence. In the case of the Global Public Procurement Law, the principles, as we have pointed out, play a key role for the existence of this sector of Global Administrative Law. They are principles that, like those of objectivity, rationality, and equal treatment mean that Global Administrative Law fulfils the function it is assigned: the rational governance of global public matters in accordance with legality.

At the beginning of the 21st century, the question regarding the significance of the general principles of Law in Administrative Law can be replied to through two very different approaches. From a positive angle, it could be said that the general principles have barely any meaning other than acknowledging in abstract terms the rules that are expressed in the regulatory system. The regulatory system provides itself with the principles because the system is their origin and cause. If, on the other hand, we look at it from a perspective of open positivism, of positivism that recognises the existence of a general legal site, of a universal legal culture (which we could call global) that represents Rule of Law, then things can be seen quite differently. From this perspective, general principles play a key role because they are the guarantors that Rule of Law and its postulates are a reality in all the branches of Law. In this way, the principles are not only the source of Global Administrative Law, which is no small matter, but they are also inspiring elements; the criteria on which Administrative Law should be built. Naturally, if Administrative Law is simply a branch of Public Law that regulates the relations between the Administration and citizens, the principles would have a very limited functionality. If Administrative Law is conceived, as per González Navarro,[6] as the Law of the public powers for the freedom of human beings, then their operational potentiality in the global legal-administrative system can be easily understood.

In the case of global public procurement, it is precisely the general principles which have permitted the drafting of global regulations that have established the system of public procurement of a wide number of public bodies in the Global Public Administration. These principles make it possible to know at all times if the tenders are being carried out within the framework of Rule of Law. In other words, it would be possible to know if the tenders are being executed in accordance with global public interest, providing the citizens of the world with quality works and services that effectively improve their living conditions.

In this respect, we must bear in mind that Spain's Supreme Court ruled through its judgment of 18 February 1992 that "the general principles of Law, the essence of

[6] GONZÁLEZ NAVARRO, Francisco. *Tratado de Derecho Administrativo*. Pamplona: Universidad de Navarra, 1998.

the legal system, are the atmosphere where legal life happens; the oxygen that allows the regulations to breathe. This explains that the principles inform the regulations – article 1.4 of the Civil Code – and the Administration is subject not only to legislation, but also to the Law – article 103 of the Constitution. Clearly, if these principles inspire the enabling regulation that grants power to the administration, this power must be executed in accordance with the demands of the principles." This case law has, in my opinion, a legal projection that goes beyond our frontiers, because it defines the function, meaning, and effectiveness of the general principles as informing elements of the overall legal system.

Even a brief examination of the terms of the doctrine contained in this judgment is enough to provide an understanding of the scope and meaning of the general principles as examples of the overall atmosphere that should govern the entire regulatory system. We are dealing, in this case, with the principles as main elements of the legal system, as the structure that sustains and gives life to the legal regulations. As expressed by the Supreme Court judgment, they are the oxygen that surrounds the Regulations; the atmosphere that allows the Regulations to survive. If they are ignored or eliminated, it would be like depriving man of oxygen. Therefore, when seen as elements that provide information and essential criteria, these general principles must be taken into account not only by the interpreter of the regulation, but also by the person who makes it. In matters of public procurement, the principles are so relevant that they themselves are the ones that sustain the entire regulatory framework of public procurement. They are also the ones that ensure that public procurement is governed by the postulates of Rule of Law. That is to say, objectivity and transparency. The grounds for the award of procurement contracts are subjects that are disciplined by general principles that have been brought to the structure of the main regulations that govern public procurement on a global scale, as we will see in the following section.

It is true that many principles were brought into the legal world as a result of the work of doctrine and case law. This can be verified by studying North American Administrative Law and European Community Administrative Law, the latter mainly regarding public procurement. In other cases, naturally, we can see the principles reflected in the regulations. But what is most important is that they exist on their own, because they are the projection on the legal reality of the essential concept of justice that transcends the system and gives it meaning. From this point of view, the principles are superior to the system. It could be said that they are its basis and that the system is justified to the extent that these principles inspire and preside over the regulatory system. In the case of global public procurement, this statement is absolutely exact.

I believe that this explicit idea, that the principles are the atmosphere and the oxygen the regulations, explains to what extent overlooking the principles brings about the degradation of Law. In effect, without being overly pessimistic but realistic,

today we can safely say that in view of the systematic and persistent attempt to turn Administrative Law into a simple appendix of power, the general principles stand as an impregnable bulwark that makes it possible to prevent such a terrible operation. Rather, the Administrative Law of Rule of Law owes much to the general principles. So much so, that if it were not for the principles, the battle against the power immunities that García de Enterría speaks of would probably have been unfair and with a clear winner. The demand, for example, for objectivity and transparency in public procurement, also on a global scale, greatly facilitates judicial control over the award of procurement contracts that public powers perform on a daily basis.

If we consider public procurement and the steady emptying into the European judicial area of the principle of equal treatment, we can understand how ignoring the general principles in matters of public procurement ends up spoiling the sense and meaning of a legal category. When this category is applied to Administrative Law, it is justified by the extent to which it provides citizens with public works and services of general interest, under the best possible technical conditions that permit the progress and development of the country, because they improve the living conditions of citizens.

It is worth drawing attention to the fact that Spain's Supreme Court, when it started developing the theory of control of administrative discretion through the general principles, connected the existence of those controls to the expansive genius of Rule of Law (judgment of 8 October 1990). Indeed, Rule of Law is a legal State; it is a State where power must act in accordance to formal and fundamental patterns and cannons. If we only focus on the procedural and formal angle of power, it could clearly end up being (and there are wounding examples known to all) the main and most effective terminal for authoritarianism and lack of measure. Therefore, the existence of substantial controls is determined by principles, which are, as the mentioned judgment reminds us, the atmosphere where legal life takes place, the oxygen that allows the regulations to breathe.

In effect, in procurement matters, these principles allow the Courts of Justice to prosecute the actions of public bodies in the field, making sure that the tenders have been carried out in accordance with the minimums required by Rule of Law for public procurement: objectivity, impartiality, advertising, competition, equal treatment, etc.

Today, the majority of general principles of Law are contained in the written standards. In matters of global public procurement, as we will see in the next section, the general principles are collected in the regulations that govern the matter. For years, these principles were built and erected thanks to case law and scientific doctrine. Then, they became the standards that exist today when, fortunately, the general principles of Law, in matters of global public procurement are explicitly recognised in the main regulations for the most relevant sectors of the tasks carried out by Public bodies.

Today, the consideration of good governance and good administration of public matters is, certainly, another main element of Global Administrative Law. In the United Nations Millennium Declaration and in the main documents of the State reform of almost all countries, sometimes even in the context of administrative laws and standards, today the right to good administration and good governance is, undoubtedly, a right of citizens.[7] Logically, in matters of public procurement, the principle of good administration is also applicable.

Indeed, the main consideration of citizens in the modern constructions of Administrative Law and public Administration provides the core argument to understand the full meaning of this new fundamental right for good administration indicated in the project for the European Constitution (article II-101), as per article 41 of the European Charter on fundamental rights. People, citizens, or individuals, depending on the legal terminology in use, are no longer passive and defenceless subjects before a power that was trying to control them, telling them what was good or bad for them, that they were subject to and which instilled, thanks to its amazing privileges and prerogatives, a type of intimidation and fear that caused them to kneel before the powerful power structure that the State so often became. Today we also witness, in spite of everything, the attempt of the global technostructure to consider citizens, not formally, of course, as new subjects, once again, as slaves, or as disposable elements.

In matters of public procurement, we must not forget that the public works or the public interest or general interest services that are the object of the tenders, must be performed in the best possible manner, technically, financially, and precisely because citizens have the right to the public funds that are to finance those activities used, and therefore belong to them. Because of this, they have the right to receive general interest works and services that guarantee better living conditions for everyone. This dimension of public activity is fortunately now in the centre of the discussion on the scope and meaning of the tasks carried out by the Public Administration in the Social State and democracy under Rule of Law.

Article 41 of the Charter represents a series of different rights of citizens over time and through the different systems that have defined the central position they occupy today in all matters referring to Administrative Law. Today, in the 21st century, citizens, as previously indicated, are no longer passive subjects who are moved by the whims of power. Today citizens participate in decisions of general interest which are no longer one-sidedly defined by the Public Administration. Citizens are more aware

[7] On that subject, see: RODRÍGUEZ-ARANA, Jaime. El derecho fundamental a la buena administración en la Constitución española y en la Unión Europea. *A&C – Revista de Direito Administrativo & Constitucional*, Belo Horizonte, ano 10, n. 40, p. 117-149, abr./jun. 2010; MEILÁN GIL, José Luis. Una construcción jurídica de la buena administración. *A&C – Revista de Direito Administrativo & Constitucional*, Belo Horizonte, ano 13, n. 54, p. 13-44, out./dez. 2013.

that the public machinery does not belong to the political parties, to politicians, or to public servants.

The right to good administration is a fundamental right of all community citizens for decisions dictated by European institutions to be impartial, fair, and reasonable with regard to their essence and the moment when they take place. As per the aforementioned article 41, this right in turn includes four rights. Now, however, we are only interested in underlining that this fundamental right to good administration demands that the public authorities act in accordance to equity and impartiality, and within reasonable periods in matters involving public procurement. That is, the principles of transparency, impartiality, motivation, rationality, equal treatment, among others, are principles that are also integrated in the obligation of good administration that must necessarily characterise the actions of the Public Administration, also in matters of public procurement.

Moreover, it could be said that to a certain extent, the catalogue of principles of Global Administrative Law springs from this capital consideration. This is due to one fundamental reason: because the demands for transparency, rationality, motivation, objectivity, responsibility, participation, pluralism, etc., that must characterise the actions of the Global Administration are deduced from this right of citizens (as the owners of the public institutions) to the good administration and good governance of public affairs.

With regard to procurement contracts, as we will now see, the principles have presided over the regulations that have been drafted by the different global public bodies: transparency, equal treatment, public tender, impartiality, fairness, the scientific progress clause, centrality of the human condition. Moreover, it could also be said that the issue of procurement contracts is the one that is most useful for understanding the main meaning of Global Administrative Law.

4 The general principles of public procurement in Global Administrative Law

If we had to choose a specific sector of Global Administrative Law to explain the meaning of the general principles in their constitution, that sector could quite possibly be that of public procurement. This is so for a number of reasons, but above all because it could be safely said that in this matter, the general principles of equal treatment, transparency, objectivity, impartiality, and of fairness have made it possible to draft the regulations that refer to public procurement through which a true Public Procurement Global Administrative Law has been established.[8]

[8] See: MEILÁN GIL, José Luis. Un meeting point de los ordenamientos jurídicos sobre contratación pública. *A&C – Revista de Direito Administrativo & Constitucional*, Belo Horizonte, ano 16, n. 63, p. 13-43, jan./mar. 2016.

In effect, as is generally known, public procurement in the supranational areas owes its existence to the importance of the general principles of public procurement. It did not adopt a multilateral or global normative nature within the commercial exchanges of the WTO until 1994, on 15 April in Marrakesh, when the agreement on public procurement was signed within this international trade organisation. The agreement brings about the need to prevent discrimination in public procurement. It constitutes the necessary corollary for the projection of the principle of equal treatment, or of non-discrimination, for contracts signed between the public sector and firms from different countries for the execution of major public works and services. The agreement appears in annex 4 of the Marrakesh Agreement and binds the signatory countries.

This public procurement agreement contains the most fundamental general principles of public procurement, which move from the domestic level to the supranational level: the principle of equal treatment given to products, services and national suppliers; the principle of public tender with the competitive selection of the tenderers as a rule, with certain exceptions for restricted procedures based on the nature of the contract; the principle of impartiality, the principle of fairness, the principle of transparency; the principle of the clause of scientific or technological progress. That is to say, Global Administrative Law is included with the principles that govern and have for a long time governed the sphere of national public procurement.

The problem with this agreement, which was updated in 2006, is, as professor Moreno Molina puts forward, that it is applied to a specific and limited number of countries of high commercial importance, establishing obligations that are too weak to be able to be entirely put into practice.[9] Also, the provision in 2006 of the resolution of conflicts through the settlement of disputes highlights to what extent there is a need for a Global Administrative Court for public procurement, consisting of experts in the matter, where the conditions of impartiality and objectivity are present. The agreement is applicable in the EU as of Council Decision 94/800 and is part of European Community Law.

Within the context of the United Nations, we must mention the model law on public procurement regarding goods, works, and services. It is a text drafted within the United Nations Committee for International Trade Law that is currently being revised and updated and which was approved in 1993. The influence of the EU directives in procurement matters is clear. In fact, this text was designed as a model on which countries that lack regulation on public procurement matters can be inspired on or, as the case may be, to even act as an interim law. Obviously, the principles are quite present in this model, especially those of transparency, objectivity, and fairness.

[9] MORENO MOLINA, José Antonio; PLEITE GUADAMILLAS, Francisco. *La nueva Ley de Contratos del Sector Público*: estudio sistemático. Madrid: La Ley, 2010.

In the regulations on public sector purchasing by the North American Free Trade Agreement we also find, as fundamental principles, equal treatment as the most favourable treatment given to the nationals, along with that of non-discrimination. In the Free Trade Area of the Americas, the work group for public sector purchasing is currently working on a draft of the regulations, which are based on the basic principles of public procurement. Likewise, the Mercosur protocol on public procurement is based on the principle of equal treatment and non-discrimination practices in matters of products and services.

However, it is in the context of the EU where this issue is best regulated and best articulated. This is probably so because, as Moreno Molina points out, the European legal area is the supranational territorial area where the Legal systems of the EU Member States are best being harmonised.[10] The Internal Laws on the matter do not present major differences. Also, the opening of public procurement to the market, which is a core demand from the system of European Community Law, calls for the design of very demanding regulations regarding the participation of tenderers in the procedures that the public sector of each country summons for works or public services that are of general interest. The problem, which is not a small one, lies in the fact that it is neither easy nor simple for the Member States to not contract those works or services from local companies. This gives way to practices of protectionism and nationalization that so often do away with the principles of equality, non-discrimination, and transparency and objectivity.

The reasons behind these nationalist or protectionist practices, as Moreno Molina points out, are different, namely: that due to its importance, public procurement is a derivation of the national economic policy; that through public procurement it is possible to intervene in the political, economic and social life of the different countries; that it can assist in the industrial restructuring of specific sectors; that it is an instrument that supports labour in industries that are under recession; that it affects national prestige, etc, etc, etc. In fact, in daily life we see that the principle of equal treatment often gives in to these and other reasons. On occasions, we even find, as Moreno Molina indicates, practices that are hard to imagine in a market that is qualified as competitive, such as tacit market sharing.[11]

In the Agreements and Treaties signed by the EU with other countries, we are also faced with principles. The agreement between the EU and Chile from 2002 has a title IV dedicated to public purchasing where the principles of transparency, rationality, non-discrimination, and equal treatment, open and effective competition occupy a

[10] MORENO MOLINA, José Antonio. *Contratos públicos*: Derecho Español y Comunitario. Madrid: Mc-Graw-Hill, 1996.

[11] MORENO MOLINA, José Antonio. *Contratos públicos*: Derecho Español y Comunitario. Madrid: Mc-Graw-Hill, 1996.

prominent place. In the section corresponding to public purchases, the Free Trade Agreement between the EU and Mexico from 2000 recognises the principle of national treatment and non-discrimination. In this same sense, the EU holds trade, association, and cooperation agreements with neighbouring countries and Asian countries that also include the basic principles of European public procurement.

It is true that in the EC Treaty there are no specific precepts in matters of public procurement. The reason is simple: in 1950 public procurement was not an important activity. Moreover, regarding this matter within the EU, we find two very different and disparate legal traditions that hinder the adoption of a single solution. While in other countries ruled under the French Administrative Law, the doctrine of administrative agreement inspired the Law on this matter, in the Anglo-Saxon world, contracts signed by Public Authorities were simply civil contracts regulated by Private Law, like any other administrative activity, which in the UK is simply a spatial private legal personality, but a private legal entity after all. In later reforms, article 163 was included to provide support for the cooperation efforts by firms, allowing them full use of the EU internal market, especially through the opening up of public procurement. The internal market is, therefore, the criteria that has allowed for a rapprochement and harmonisation of the Internal Laws in this matter. This results from the EU Directives, which have established a series of principles that are common to the European legal-administrative area, applicable both to countries under the Common Law or French legal tradition. As Moreno Molina states, they are principles that have fulfilled and continue to fulfil the role of essential configuring element of a European Law for public procurement.[12] In Europe, therefore, it could be said that the principles are the justification of the Administrative Law for public procurement.

In this field of public procurement, the applicable general principles provide that in the sector there exist an atmosphere of legal safety and certainty in matters of application and interpretation, to help the public funds that are destined to public works and services or services of general interest in the EU and in each of the Member States, carry out their designated task. As Moreno Molina maintains, these principles spring from rules that are established in the EC Treaty and in the project of the International Treaty that institutes a Constitution for Europe.[13] These principles, today expressly contained in the Directives that regulate this matter, are the basis for the Administrative Law that governs procurement contracts.

The EU Court of Justice, which is the public body that has most contributed to strengthening the importance of the principles in matters of public procurement, has

[12] MORENO MOLINA, José Antonio. *Contratos públicos*: Derecho Español y Comunitario. Madrid: Mc-Graw-Hill, 1996.

[13] MORENO MOLINA, José Antonio. *Contratos públicos*: Derecho Español y Comunitario. Madrid: Mc-Graw-Hill, 1996.

pointed out that the principles of objectivity, impartiality and non-discrimination in the award of procurement contracts are applicable not only to the contracts affected by the Directives on this matter. This affirmation brings forward the unquestionable fragmentary nature of the directives in matters of public procurement, which are not complete and finished regulations on public procurement. Therefore, the CJEU, aware that the Member States are still free to maintain or adopt substantive regulations or procedures to govern procurement contracts, states that this regulatory capacity of the States is communal "under the condition that all the provisions applicable to Community Law and, specifically, the prohibitions derived from the principles established by the Treaty" (judgment CEI and Bellini of 9 July 1987). This doctrine is entirely consistent with the actual nature of Community Law, which has a preferential nature and is directly applicable in the Member States. It therefore follows, as a necessary corollary, that the principles that are inherent to the provisions of the Treaty are of general application in the domestic Legal systems of the different EU Member States. It is one thing for the Directives to have to regulate certain sectors, determining matters, but it is a very different one that the general principles are not applied to the cases not contemplated in or excluded from the directives.

Community Law is a Law that is being drafted over time and is still not finished. The principles of the Treaty, however, have a permanent scope on the Standards that constitute the Treaty. Therefore, this system, that is under constant evolution and has a possible material scope, is at all times illuminated by the light of the principles, which assist in the understanding of the scope and meaning of the different institutions and categories that make up European Administrative Law. In this regard, the judgment by the CJEU of 3 October 2005, Parking Brixen GMBH, provides that "Notwithstanding the fact that public service concession contracts are, as Community law stands at present, excluded from the scope of Directive 92/50, the public authorities concluding them are, nonetheless, bound to comply with the fundamental rules of the EC Treaty, in general, and the principle of non-discrimination on the ground of nationality".

In this judgment of 3 October 2005, as Moreno Molina points out in this collective work, we find the legal bases that explain the scope of the principle of non-discrimination in European Community Law.[14] On the one hand, the CJEU brings to mind that article 12 of the Treaty proclaims the prohibition of any type of discrimination on the ground of nationality; article 43 prohibits restrictions to the freedom of establishment of the nationals of a Member State in the territory of another Member State, and article 49, also from the Treaty, likewise prohibits the restriction of the freedom to provide services within the Community for nationals from Member States established in a Community country, today of the EU, different than the one of the service provider.

[14] MORENO MOLINA, José Antonio; PLEITE GUADAMILLAS, Francisco. *La nueva Ley de Contratos del Sector Público*: estudio sistemático. Madrid: La Ley, 2010.

In effect, in these precepts the Treaty is categorical regarding the principle of non-discrimination on the ground of nationality, which has different possibilities and that, in all cases, applies to all legal relations that take place between the nationals of a Member State and those of another Member State and vice-versa, as is obvious.

The CJEU pointed out in the judgment of 5 December 1989, Commission/ Italy that articles 43 and 49 of the Treaty are an individual expression of equal treatment, just as the prohibition of discrimination on the ground of nationality is also a manifestation of this principle, as this Court pronounced in its judgment of 8 October 1980, Uberschar. The judgment by the CJEU of 3 October 1985 has specified, in this regard, that the principle of equal treatment of tenderers in case law regarding the community directives in matters of public procurement aims for all tenderers to receive the same opportunities when presenting the contents of their tenders, regardless of their nationality. Therefore, it is understood that this principle, connected to that of freedom of establishment, implies, as far as equal treatment and prohibition of discrimination on the ground of nationality are concerned (as this CJEU judgment continues to state regarding public procurement) that there is an obligation of transparency that allows the awarding public authority to ensure that the mentioned principles are respected. Moreover, as this CJEU judgment still states "this obligation of transparency that befalls the Authority, consists in guaranteeing, for the benefit of any potential bidder, a degree of advertising sufficient to enable the market to be opened up to competition and to control the impartiality of the procedures".

In this judgment we find, therefore, all the general principles of public procurement: advertising, competition, objectivity, transparency, impartiality, equal treatment, and prohibition of discrimination on the ground of nationality. Actually, the mandate of article 163 of the Treaty of opening public procurement to the market – which was the logical consequence of the principles of the Treaty – has brought about the creation of a series of principles. These, in line with the spirit of the EU constituted, as pointed out earlier, the domestic Legal system of many EU countries. These countries understood that the system of Administrative Law of public procurement could not, in some cases, lead to a closed system of solid privileges of the awarding Administration that severs advertising and free competition and in others, it was a system in line with competition and the open market. Now, competition, freedom of establishment, and the elimination of monopoly means that in public procurement in the EU, the countries with European continental tradition and countries with Common Law tradition must coexist with a legal regime. Where there is competition there must also be, as a main criterion, an understanding of public interest that is more open and dynamic.

The principle of tendering, of the awarding of a procurement contract in an open process of competition, has also been recognised in the judgment of 2005 that I am now commenting. Tenders are, in addition, a consequence, says the CJEU of another Treaty precept (number 86) which establishes that the Member States will not adopt

or maintain, with respect to public companies, and to those companies to which they grant special or exclusive rights, any measure that is contrary to the regulations of the present Treaty.

Today, the Law of procurement contracts in EU countries obeys common principles; common patterns that were born from the EC Treaty out of the central idea of competition – the principles of equality and freedom of establishment – as a result of the creation of an internal market where obviously the rules of a sector of such economic importance as public procurement must follow uniform criteria. This reality has resulted from the approval of a set of directives that have promoted the application of these principles in all the Member States. I insist that the effort made by countries with an administrative agreement system and by countries with a civil contract system to submit to these principles reveals to what extent a task of synthesis is possible. An example is the one carried out regarding public services and services of general interest, from both legal traditions, incorporating the best and most reasonable aspects of each of the legal systems, in the context of the principles that preside over the matter of public procurement in Europe: transparency, non-discrimination, and objectivity. In this regard, Directive 2004/18/EC in its article 2 and Directive 2004/17/CE in its article 10 are very clear.

As Moreno Molina indicates, the principles that are at the base of Community Law for public procurement originate from the actual principles of Primary Law established in the Treaty.[15] The are, namely, the prohibition of discrimination on the ground of nationality, the principle of free movement of goods, the principle of freedom of establishment and services and the regulations for competition. In the context of these principles, the specific legal regime designed by the directives for public procurement in the EU is understood, with the modulations carried out by the actual case law of the CJEU. This case law specifies that the principles are of general application, even if we are in sectors excluded from the scope of application of these community standards. Thus, for example, the judgment from 22 September 1988, after stating the exclusion from the directive of a specific contract, pointed out subsequently that the principle of free movement of goods, from article 28 of the Treaty, is of general compliance. In this same sense, now with regard to the principles of freedom of establishment and freedom to provide services, the CJEU in a judgment from 5 December 1989, understood that those principles from Primary Law must be observed in all cases, even in the face of a contract excluded from the scope of the Community Directives.

The CJEU case law also establishes that the directives on this matter are to be interpreted in accordance with the principles of the Treaty. So, for example, the

[15] MORENO MOLINA, José Antonio. *Contratos públicos*: Derecho Español y Comunitario. Madrid: Mc-Graw-Hill, 1996.

judgment of 12 March 1990 sets forth that these directives cannot be interpreted as per a national law that goes against the principles of the Treaty. Moreover, the principle of prohibition of discrimination, in spite of its scarce operative potentialities in real life, is considered by the CJEU as the basis of every system of public procurement on a community level, as established by the judgment of 22 June 1993. This principle is a manifestation of the more general principle of equal treatment that, according to the judgment of 14 December 2004, claims that situations that are similar should not be treated differently, and that situations that are different should not be treated in an identical manner unless that treatment is objectively justified. This principle is qualified as fundamental by the CJEU itself, by virtue of which the judgment of 13 July 1993 prohibits manifest discrimination based on nationality (...) but it also prohibits any other covert form of discrimination that, by applying other differentiating criteria lead to the same result.

The principle of equal treatment prevents, according to the CJEU, the awarding authority from considering a modification performed by a tenderer because that situation would provide an advantage to one of the tenderers, and this would go against the principle. This principle, as also specified by Community case law, is closely linked to that of transparency. It is not possible to authorise competitors to have different conditions when presenting their tenders, as indicated by the judgment of 25 April 1996. It is interesting to underline that in this matter the case law indicates that the diligent management of the process of public procurement is a demand of the principles of good administration, equal treatment (judgment of 29 April 2004). The principle of good administration, referred to in the previous section, is also considered, further to the European Charter of Fundamental Rights, as a principle of compulsory observance by the awarding authorities in the context of the management of the process of administrative procurement. In this regard, it is worth highlighting that the EU Ombudsman, by virtue of the principle of good administration, pointed out in his decision of 22 April 2002 that, according to good administrative practices, in tender procedures the Administration must abide by the standards established for those procedures." These standards, as we are fully aware, are governed by the general principles of public procurement, which in turn are derived from the principles of Primary Law mentioned earlier in this section.

These principles, that are a necessary corollary to the principle of competition and equal treatment, clearly represent a restriction to a wider interpretation of what in the Law on public contracts are the privileges or prerogatives of the Administration. Now, these principles modulate the exercise of powers in such a way that it could rightly be said that they are not coherent with European Community Law when they imply the fracturing of these principles. This fracturing would not be considered as such when an inequality is justified objectively. This could only take place when that situation is based on justified reasons of general interest, adequately argued for

the specific case by the awarding authority. In this way, the understanding of the traditional extraordinary authorities of the Administration in matters of administrative agreements, potestas variandi, unilateral termination, unilateral interpretation, must be done in the context of the general principles that are derived from the EC Treaty. In this regard, for example, the judgment of 25 April 1996, understands that the attribution of unrestricted freedom of choice on the awarding authority does not conform to Community Law. That is to say, that it prohibits arbitrariness, which is, as Locke would say, the absence of rationality. So, as the judgment continues to state, the mere circumstance that a criterion for awarding a procurement contract is based on information that will be known in detail after the award of the contract, cannot be said to confer that unrestricted freedom on the authority.

The principle of free movement of goods is also applicable to public procurement in the Community dimension, for as Moreno Molina rightly points out, it is the main title that justifies an action by the Community in this matter.[16] Likewise, freedom of establishment and freedom to provide services are principles that allow for the elimination of discrimination, both on the ground of nationality, as for any other reason, covert or not, that brings about the fracture of the principle of equal treatment.

In short, the principles of public procurement in the European legal area originate from the actual light that the fundamental principles of the Treaty cast on a reality that until not long ago was considered irrelevant. But today, that reality is of transcendental importance also for the economic development and social cohesion of countries and supranational bodies. In this case, the principles examined, if we take into account the judgment of 17 November 1993 of the CJEU, constitute the realization of the internal market based on freedom of establishment and freedom to provide services, as well as on the need to guarantee the effectiveness of the rights recognised by the Treaty in matters of public procurement, namely: competition, advertising, equal treatment and prohibition to discriminate, objectivity, impartiality and transparency.

5 Concluding thoughts

Global Administrative Law is an "In fieri" Law, which is still being constituted, and is not yet systematized. It has not as yet been studied with systemic claims, although its existence is admitted, just as it is admitted that globalisation has also reached, naturally, the field of Administrative Law. In my opinion, the authors that have most studied the subject are Kingsbury, Krisch, and Stewart, whose study on the emergence of Global Administrative Laws is one of the most relevant ones. They are in favour of proceeding with caution, preferring a pragmatic approach: to observe

[16] MORENO MOLINA, José Antonio. *Contratos públicos*: Derecho Español y Comunitario. Madrid: Mc-Graw-Hill, 1996.

what works and to build up from that perspective. In the case of the Law of public procurement, thanks to the EU, an entire sector of Global Administrative Law has been created, with principal content that, as we can see, is spreading all over the world. This is because they are principles that in general derive from an experience of integration sealed by the compromises of Rule of Law that constitute the EU.

The different ways of understanding Law and the legal system pose certain difficulties regarding the establishment of the principles on which to build the structure of Global Administrative Law, for there is no global Constitution or clearly established global public power. Regarding public procurement, I believe the EU legal-administrative area could be seen as an example to be followed for the reasons stated above. However, on the basis of the Universal Declaration of Human Rights, it is more than possible – alongside the reality of the regulations, legal acts and decisions that take place in this field – to establish a catalogue of principles that for this author must originate from the clauses of Rule of Law. If we are faithful to what Administrative Law represented in Europe after the fall of the Ancien Regime, we must be aware that today the general system requires new legal impulses to restore and recover the meaning of Administrative Law as a law that fights to keep public and economic powers down to their reasonable limits. The principle of good administration, a noteworthy compendium of the meaning of its inspiring principles – rationality, participation, pluralism, accountability, transparency, revision, responsibility – provides a good way to start building a global legal-administrative system that allows, in effect, for Administrative Law to be what it should be: the Law of power for freedom.

Agustín Gordillo reminds us, in a study of this period, that precisely the principles of legal safety and justice are the ones that should preside over this new expression of permanent tendency towards the unity of the legal system which today, in the case of Administrative Law, we refer to as Global Administrative Law. In this regard, projecting both principles on the economic reality, the principle of rationality (that we have dealt with extensively here under the denomination of objectivity or equal treatment with prohibition to discriminate) stands before us, as professor Gordillo superbly warns, like a principle that is actually the projection of the more general principle of rationality derived from Rule of Law on economic activity, and procurement contracts play an important role in this field.[17]

Through the postulates of open, plural, dynamic, and complementary thought, I believe it is easier to understand the scope of Global Administrative Law, out of its many versions and approaches, through this perspective of guarantor and insurer of the rights of citizens. If we do not venture beyond a functional approach that legitimates

[17] GORDILLO, Agustín. *Hacia la unidad del orden jurídico mundial*. Author's presentation at the University of Buenos Aires, at the Centre for Students, on 17 March 2009.

the excesses and abuses of a technostructure that does not aspire to anything besides global dominance through power and the economy, then we have wasted our time. In this day and age, when Global Administrative Law is making its appearance, instead of renouncing to the establishment of the site on which to erect this building, the aim of this paper is precisely to contribute to the debate on the need for a Global Administrative Law, as the Law that it is. It is a product of culture that expresses a point of view on basic justice that is profoundly humanistic and permits freedom in solidarity of citizens to also be guaranteed by the Global legal-administrative system. In matters of contracts, as set forward above, freedom, competition, equal treatment, objectivity or transparency call for a Law that thinks more about citizens and less about the powers of the Public Bodies.

In matters of public procurement, the aim is to provide citizens with services, supplies, and public works that have a positive effect on their living conditions. To do so, the traditional Administration powers in countries under an administrative agreement system need to have a different understanding. They need to act as powers that can operate when the general interest demands it, argued specifically and punctually. The EU's Administrative Law in matters of public procurement has brought with it the idea that, because it involves the management of public funds that belong to each and every citizen living in an internal market, its aim is to seek, regardless of their country and nationality those service providers who are best able to execute the works, render the service or the supplies, as the case may be.

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