

Initiating of European and International Standards into national regulatory instruments – can the Global Administrative Law penetrate equally into the national legislations?

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Introduction

The globalization is described by many scholars as a future inevitability. Others say that we already live in ages of globalization because of the existing global movement of finances, global trade, global services and movement of people.

The world today is sophisticatedly organized and there is no doubt that the global movement of the above four elements is not equal in the different parts of the world. In some countries the penetration of global capitals, services and goods meets such stumbling-blocks as local legislation, non-tariff barriers and restrictive trade practices. In others there are obstacles to immigration because of local customs or religion.

It is incontestable that the existing movement towards free trade is part of a general and irresistible movement toward a global community. But we should consider that contrary to this trend, the transplanting of legal rules is affected by subordination to very strong national or regional economic and political regulation. Also, in recent years we witnessed in some regions the movement of capital and some goods according to the rules of the Shari'ah Law, rather than the widespread common rules. These and many other complications of globalization arise in today's world and new instruments are required to solve them.

One such instrument is likely to be the Global Administrative Law (GAL), the dynamic development of which in the last years shows the potential that it has to deal with some issues of the administrative aspects of globalization.

It is clear that to be globally effective, GAL principles and rules should be enforced in a majority of countries (if not in all) - an idea that is one of the fundamentals of GAL. With this in mind and considering the vast number of legal, cultural, religious and other obstacles which nowadays impede the movement toward globalization, one question arises: can GAL penetrate equally in the different countries.

To answer the above question about the equal penetration of GAL I decided to use as an experimental model the International Technical Standards (ITS) and the way

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in which they are accepted in several selected countries. This choice was made on account of the characteristics by which the standards resemble the rules of GAL.²

Generally speaking, the technical standards are specific rules or guidances, accepted by a standardization body (usually non-governmental or quasi-governmental), related to technical characteristics of goods, and voluntarily applied.³ Notwithstanding that they are not legal regulations, they exist in a “triangle of rules” formed by the national standardization rules and legislation, the rules of international standardization organizations and the WTO/TBT Agreement.⁴ All these characteristics shape the standards as “Soft law”, or “non-binding norms”, as opposed to “Hard law” (legally binding rules).⁵ The International Technical Standards also belong to this category of “Soft law”.⁶

ITS are used by business and international organizations in international trade. Governments may also implement them in national regulatory instruments, in which case they play the role of “gap-fillers” in situations where the “hard” forms of law are not enough to regulate the matter in hand.⁷ In this case the standards as rules are transformed from “soft” to “hard” regulations, as they become legally binding.

The standards have four levels of application: International, Regional, State and Municipal. This feature is relevant to the research as it reveals the depth to which

² This paper accepts the ITS as a form of Global Administrative Rules only for the purpose of this experimental model. There are many other questions about their life as such rules, which are behind the research and need complimentary analysis.

³ This is simplified definition for standards for the purpose of this research. Many different definitions for standards are given by the standard maker organizations on national and international level and sometime they deviate from each other significantly.

The ISO/IEC Guide 2:2004 defines a standard as a document, established by consensus and approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context. The TBT Agreement (Annex 1) also contains definition of standard, which in difference from the given in ISO/IEC is related only to products or processes and production methods and is applied voluntarily. See: WTO Analytical Index: Guide to WTO Law and Practice, 1st Edition (2003), p. 621.

⁴ The TBT Agreement requires WTO Members to use international standards when such standards are available, except when such standards “would be an ineffective or inappropriate means for the fulfilment of the legitimate objective pursued” (Art. 2.4). The Agreement also stated Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3).

⁵ See: Kirton, John J. and Michael J. Trebilcock (eds.) 2004. *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance*, Ashgate Publishing, November 2004.

⁶ See: Morais, Herbert V.: The quest for international standards: global governance vs. sovereignty. In: *University of Kansas law review*. 50 (2002) 4: 779-821 (781) and Abbot, Kenneth W.; Duncan Snidai: *Hard and soft law in international governance*. In: *International organization*. 54 (2000) 3: 421-456.

⁷ See: Naomi Roht-Arriaza, “Soft Law” in a “Hybrid” Organization: The International Organization for Standardization. In: *Commitment and Compliance: The role of Non-Binding Norms in the International Legal System*. (Dinah Shelton ed., 2000) (263 – 280), 263.

standards can penetrate and respectively – the levels of possible spreading of GAL rules.⁸

Other reason for this choice is that similarly to the ITS, initiating of GAL rules on national level needs always the approval of the state in some extent – a situation that probably will exist long time henceforth.

Ultimately, the ITS go a long way to ensuring compatibility in international trade – one of the main engines of globalization.

Of course, it should be considered that ITS are more legal phenomenon, than completed legal rules, as they have no some of the characteristics of the last one. The ITS are not constitutionally based, there are no higher legal rules, that legitimate the lower ones and the standards setters are usually private parties, not elected by the public.⁹ But namely these semi-legal characteristics made them attractive for investigation from many scholars.

The analysis is limited to the important issues, related to ITS and does not cover the activities of the international and national (European) standardization organizations and their accountability, as it is not directly linked with the initiation of the ITS on national level.

The legislations analyzed in relation to opportunities for penetration of ITS (respectively GAL), are these of the EU, Japan, USA, Hungary, Poland, Bulgaria and Croatia. These countries have been selected as they belong to different trade alliances, strive for different markets and are from different geographical and cultural regions. Furthermore, the economies of these countries are in different stages of development.

The observed legislations are separated into three groups. The idea behind this separation is the clarification of what the differences are in the level of penetration of the ITS and, respectively, to make some conclusions about the prospective penetration of GAL rules in such groups of countries.

The first group includes legislations of some of the developed countries in the world - USA, Japan and EU. In the second group are the legislations of Hungary and Poland as representative of “middle size economies”. Their specific is that they are new EU members and their legislations and economies are linked very strongly to the EU

⁸ It may look that the Municipal Level of application is not so important, but we should not forget that some municipalities are larger than small states and use their local standards. See for example Municipal energy technical standards of Frankfurt since 1998. http://www.energie-cites.org/documents/stuttgart/w2_frankfurt_am_main.pdf

⁹ See more about these characteristics of standards in: Harm Schepel, *Constituting Private Governance Regimes: Standards Bodies in American Law*, in Ch. Joerges, I.-J. Sand & G. Teubner (eds.), *Transnational Governance and Constitutionalism*, Oxford: Hart, 2004, 161-188.

one. The third group presents the legislations of developing countries Bulgaria and Croatia. These two countries strive for EU membership, but their economies are less linked to EU compare with these of Poland and Hungary.

The ITS in the developed countries

USA

The United States system of standards is shaped by the federal structure of the US and is subject to the intensive influence of a huge number of private standards agencies. The existence of different state legislations into Federation has for consequence that some states are tough regulators of standards while others are more lax.¹⁰ The role of the U.S. government in standards development is to foster cooperative public and private relationships and to encourage the development of standards for private persons by utilizing a variety of agencies in implementing and enforcing the national standardization policy.

The main national organization integrating all standardization agencies in the US is the American National Standards Institute (ANSI). It is private, non-profit, and was created with the aim of administering and coordinating the U.S. voluntary standardization and conformity assessment system.

The use of technical standards into national legislation is regulated by the National Technology Transfer and Advancement Act of 1995 (NTTAA). Section 12 (d) (1) from the Act states: “[A]ll Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.”

The Act does not stipulate the use of other, non-national standards as means to carry out policy objectives, nor uses words such as “international”, “foreign” or “European” concerning standards. This approach toward International Standards was sharply criticized in 1996. The critics have said that, “While the US and all other WTO signatories have clearly committed to the adoption of international standards this could be viewed as a longer term objective. The short term aim that is evident in the US National Export Strategy focuses more on standards diplomacy as a mechanism for boosting export opportunities for US producers ... in South East Asia, China and South

¹⁰ See: Samuel Krislov, *How nations choose product standards and standards change nations*. 1997, University of Pittsburg Press, p. 122.

Korea as these countries represent the major markets of the future.”¹¹ In 1998, probably as reaction to this criticism, Government OMB Circular A-119 instructed the federal agencies to use voluntary consensus standards, both domestic and international, in their regulatory and procurement activities in lieu of government-unique standards.¹²

Six years later, the position of US officials had become more positive toward the acceptance of international standards, but on the whole, the goal remained the same - to promote US standards as a tool for strengthening the competitiveness of U.S. traders internationally.¹³ Despite the fact that analysis reports repeatedly called for a US standardization system more “open” in regard to international standards, there continues to be a trend towards the fostering of using the US standards and technical regulations in overseas markets.¹⁴

Bearing in mind the development of US foreign trade policy during the period of 1996 – 2004 and the above-cited report of Donald L. Evans, we have to agree that since 2004 there haven’t been major changes in US standardization policy. It remains open “de jure” to international standards, but “de facto” closed to their penetration.

To date, the US standards developing organization does not accept or adopt standards from the EU or other countries. Only eight percent of American National Standards present adoptions of ISO standards and this percentage increases quite slowly over time.¹⁵

¹¹ Paper Presented at the International Trade Policy Conference at the Australian APEC Study Centre., 5 and 6 December 1996. Product Standards and their Impact on International Trade. Drew Andison. Director, Standards and Conformance Policy Section. Department of Industry Science and Tourism. <http://www.apec.org.au/docs/citer10.htm>

¹² In § 43 the Circular states that “This language [of the Circular], ..., states only that such international standards should be “considered,” not that they are mandated or that they should be given any preference. No part of this Circular is intended to preempt international treaties. Nor is this Circular intended to create the basis for discrimination between an international and a domestic voluntary consensus standard.” The text is available at: <http://www.whitehouse.gov/omb/circulars/a119/a119fr.html>

¹³ See: Report from Commerce Secretary Donald L. Evans. “Standards and Competitiveness - Coordinating for Results. Removing Standards-Related Trade Barriers Through Effective Collaboration.” May 18, 2004, 202-482-4883. Available at: http://www.technology.gov/reports/NIST/2004/trade_barriers.pdf

And: Phillip J. Bond. Commentary of U.S. Commerce Secretary Evans’ Standards Initiative to Strengthen U.S. Competitiveness. December 4, 2003. Available at: http://www.technology.gov/reports/2003/p_Standards&Regulations1204.htm

¹⁴ Two examples from the report of Donald L. Evans verified this conclusion: Using Market Development Cooperator Program (MDCP) grant to facilitate adoption of US standards in China and promoting the use of U.S. (ATSC) DTV standard on Latin American markets such as Brazil, Mexico, and Chile. (Page 24 from the report).

¹⁵ This date is received through interview of the author with ANSI officials.

Japan

Shortly after the World War II, Japan began attempts to rebuild the nation's industry. One step toward this was the Diet's promulgation in 1949 of the Japan Industrial Standardization Law (JIS Law). Article 67 from this law stated that: "Whenever the State or any local public entity intends to decide on technical standards with respect to the mineral and manufacturing industries, ..., they shall carry them out by having respect for the Japanese industrial standards."

As the Japanese economy began to orientate towards export of domestically manufactured goods, stringent standards for these goods were decided upon in the 1950s.

A country's setting of stringent technical standards is often regarded by other countries as tantamount to creating trade barriers, but in the case of Japan the strengthening of standards became a catalyst for upgrading the national industry. From an economic point of view stringent technical standards are beneficial in an international context, as they encourage producers to strive to become the "first producer" that meets the standard requirements.¹⁶ When Japanese corporations succeeded in meeting these high-level standards, they became more competitive in foreign markets because of their quality products and in this way began to "export" standards.

Japanese foreign trade policy is described by some commentators as an "iron triangle", formed by close relationships between government, bureaucracy and big business.¹⁷ This "triangle" analogy is applicable in the case of Japanese Industrial Standards. The National Standardization Committee (JISC) is a state authority, a division of the Ministry of Economy, Trade and Industry (METI), and mediates effectively between government and business. It should be noted that this cooperation has not always been successful. In the case of the Betamax Sony – VHS JVC video war, the JISC were slow to bring the dispute to a settlement. After this case, in order to avoid the repetition of such a dispute, one of the national priorities of the JISC became the promotion of Japan Industrial Standards (JIS) in mandatory regulations. The JISC also puts significant pressure on firms to meet basic standards, allowing them to move on to the next stage of the innovation cycle. One example of this is the standardization of the

¹⁶ Example for this is the promulgated in 1979 Law Concerning the Rational Use of Energy (Amended 2005 and also referred to as the "Energy Conservation Law"). The law sets tough standards for energy usage in electric goods and automobiles.

¹⁷ See: Dominic Kelly, *The Political Economy of Japanese Trade Policy*. In: *The Politics of International Trade in the Twenty-first Century. Actors, issues and Regional Dynamics*. (Ed. Dominic Kelly and Wyn Grant). Palgrave Macmillan. 2005. (330–345), 330.

DVD format. When the new DVD formats were invented, the JISC put a lot of effort into bringing together the companies concerned for the creation of a common standard.

At international level, Japan has proposed to ISO/IEC a draft for international standards, based on JIS, and harmonization of JIS with international standards. In relation to the latter, in 1995 the Japanese government began promotion of deregulation of activities related to standards, certification, and export and import of goods. In 2001 a new “Three-Year Program for Promoting Regulatory Reform” was accepted by Cabinet Decision.¹⁸ The Program stated that in areas where ISO and other international standards exist, efforts shall be made to harmonize Japanese standards with them after verifying the appropriateness of said standards.¹⁹ In areas where international standards do not yet exist, efforts shall be made to promote the adoption of Japanese standards as international standards.²⁰

In relation to the question of the penetration of the industrial standards into national standardization systems, the circumstances surrounding the implementation of Japanese standards in other countries makes an interesting study. Years ago, Japanese industrial standards penetrated all East Asia countries through exported Japanese goods and due to Japan Official Development Assistance (ODA) policy and Japanese private sector investments. The East Asian countries gradually became industrialized countries, following the model of Japan. During these years Japan was the biggest importer of raw materials (which usually require low-level standards) and probably the biggest exporter of high-level standardized industrial goods.²¹ In this way Japanese industrial standards became established in many other countries.

After the East Asian financial crisis in 1998 the movement toward regionalism started to grow rapidly. Nowadays Japan is one of the main investors in the countries of East Asia and exporter of industrial technologies, but is no longer the main exporter of industrial goods. This is because of the transfer of Japanese manufacturing to other East Asian countries. Currently, Japanese export-oriented industrial manufacturers are moving more of their operations offshore than their counterparts in the US and the EU.

¹⁸ The text of the Programme is available at:
http://www.mofa.go.jp/j_info/japan/regulate/program9903.html

¹⁹ Since 1995 till 1997 Japan alignment 1692 national standards with International Standards. At 2000 there were 3,600 JIS aligned with corresponding International Standards (IS). Till 2005 Japan has harmonized more than 90 % of its national standards with existing ISO/IEC standards. But the tricky thing here is that there are 5,000 JIS and 12,000 International Standards that are not corresponding to each other. Source: http://www.jisc.go.jp/eng/jisc/cap_comp-review.html

²⁰ Three-Year Program for Promoting Regulatory Reform, Attachment 2, (3) International Harmonization of Standards.

²¹ In spite this extensive trade exchange during these years Japan was not involved in any Preferential Trade Agreement (PTA) with other countries even on regional level.

Furthermore, there are more Japanese companies in the US and the EU than there are US and EU companies in Japan. All this has as a consequence that more and more industrial goods from abroad (especially from East Asian countries) are imported into Japan.

These processes have inevitably led to the opening of the Japanese standardization system toward accepting of international standards and in the same time - making it more familiar to foreigners. Many analysts conclude that nowadays the Japanese Standardization System is more “transparent” than 20-30 years ago. However, if we compare the text of the Standardization Act before and now, there is no change. The text is the same and that provokes the question, what instigated the changes in the Japanese understanding about the transparency of standards? The answer is probably the development of Japanese industry in a global context. During the analyzed period Japan took a leading position in the technological manufacturing of new products for which there was no standard worldwide analogy. In many areas of trade, Japanese goods became the exemplification of a standard. This led to the need for a more transparent process in setting standards. Foreign applicators of new leading Japanese standards needed a transparent process since they would be implementing them in their own countries. Furthermore, Japan had to reveal the content of its standards, promoting their implication in doing so. To prove this statement we should point that in contrast, the Japanese standards in banking and financial activities are not so popular abroad.

To date, the world movement toward free trade without tariff and non-tariff barriers has also affected the Free Trade Policy of Japan, and has led to openness and continuing change in Japan.²² In 2002 Japan became the first North-east Asian country to sign a Preferential Trade Agreement (PTA) with another country from the region.²³ Today Japan is more open than ever to regional economic and political integration and regional cooperation. This can be seen in the bilateral negotiations between Japan and the Association of the East Asian Nations as well as in the multilateral negotiations

²² Dominic Kelly pointed out that under the influence of the world movement toward free trade “[T]he Japanese capitalism may well be converging with its Anglo-Saxon rival, but that it has not yet fully done so.” See: Dominic Kelly, *The Political Economy of Japanese Trade Policy*. In: *The Politics of International Trade in the Twenty-first Century. Actors, issues and Regional Dynamics*. (Ed. Dominic Kelly and Wyn Grant). Palgrave Macmillan. 2005. (330–345), 341.

²³ Japan Singapore Economic Partnership Agreement. The Agreement includes Free trade agreement and Agreements about services, investment and economic cooperation. One of the benefits from the Agreement that have been expected before its undersigning was the harmonization of the standards of products. See Sec. 3, (18) from Benefits of the JSEPA. Available at: <http://www.mofa.go.jp/region/asia-paci/singapore/section3.pdf>

between Japan and individual ASEAN countries such as Singapore, Thailand, Malaysia, and so on.²⁴

At the end of the study on Japan it should be mentioned that the successful penetration of Japanese industrial standards in the region has not only a technical, but also a cultural basis. According to some scholars, the connections among East Asian nations are based to a great extent on the so-called "East Asian civilization" common to them all.²⁵ This according to other analysts has effected the creation of a new "East Asian common-culture block".²⁶

EU

The unification of Europe promoted the development of common standards as a tool for a more integrated market. The Agreement between the Community political institutions (EC) and the non-profit European Standardization Bodies (CEN and CENELEC) has resulted in the publishing of the Council Resolution on a New Approach to technical harmonization and standards in 1985.²⁷ The New Approach Resolution establishes important links between legal requirements toward goods and technical (industrial) harmonized standards. For the Resolution to be effective, public authorities are required to use a "general reference to standards" approach to mandatory technical regulations. After this, standardization becomes more of a European issue than a national one.

In 1998 the European Parliament and the European Council issued Directive 98/34/EC. The Directive defines European standards as technical specifications adopted by European standardization organizations for repeated or continuous application, with which compliance is not compulsory (Art. 1, (4)). According to the internal rules of the EU standardization organizations, European standards must be transposed at national level. This means that the European standards must be made available as national standards in an identical way, and that all conflicting national standards must be withdrawn in a given period. This is one of the major differences between the ISO/IEC and the CEN/CENELEC standardization approaches. ISO

²⁴ See: Motoshige Itoh, *Economic Integration in East Asia: A Japanese Viewpoint*. In: *Regional integration: Europe and Asia compared*. (Ed. Woosik Moon, Bernadette Andreosso-O'Callaghan). Ashgate. 2005 (78-96).

²⁵ See: Yamazaki Masakazu, "Asia, a Civilization in the Making: East Asia, the Pacific and the Modern Age." *Foreign Affairs*, July/August 1996.

²⁶ See: Chiba Hitoshi, *Asia Major. Squaring the East Asian Family Circle*. *The Japan Journal*. 2006, Vol. 2, N 11, (6-11), 6.

²⁷ OJ C 136 , 04/06/1985

standards can be adopted at national level in a relatively liberal way, as there is a certain margin for deviation in the regulation of detail. The CEN standards do not allow such freedom – the standardization organizations of the member countries are required to adopt them without any change and to remove non-corresponding national standards.

It should be mentioned that quite in contrast with the Old Approach Directives, in the New Approach Directives there is no reference to “International Standards”. According to an OECD report, the relevance of the omitted reference to international standards should not be overestimated as the International Standards are often used for European standards.²⁸ But on the other hand, omitting this reference can be accepted as an expression of Europe’s wish to use its own standards instead of international ones.²⁹

The dynamic of the process of EU standards’ penetration demonstrates close links between the enlarging of the EU and the disseminating of EU standards in the new member countries. The general guidelines for co-operation between CEN, CENELEC and ETSI, and the EC and the EFTA from 2003 reveals in a good light the European standardization policy objectives toward the candidate countries.³⁰ The guidelines consider that “European standardization is acknowledged as playing a key role for the economic and political integration of the candidate countries into the European Union”.

Investigating the EU standards we can not omit analysis of the Harmonized European Standards. Their main feature is that they are European standards fulfilling the corresponding safety objectives set out in the EU Directives.³¹ The Harmonized Standards are a good example of the link between the penetration of EU legislation in national standardization activities and the relationship between the legislative and standardization processes.³²

Manufacturers (within or outside the EU) can choose whether or not to make their production conform to Harmonized Standards. But practically speaking, they have no choice and prefer to produce in accordance with the Harmonized EU standards as it

²⁸ See: Consumers, Product Safety Standards and International Trade. OECD report, 1991, p. 40.

²⁹ We should have in mind that CEN standards are coordinated with International Organization for Standardization (ISO) standards via the ISO/CEN Vienna Agreement, which provides the means for ISO standards to become CEN standards and vice versa. Also, the Agreement reflected primacy of international standardization.

³⁰ See: General guidelines for the co-operation between CEN, CENELEC and ETSI and the European Commission and the European Free Trade Association. Issued in 28 March 2003. p. 3 Available at: http://www.ku.din.de/sixcms_upload/media/1379/guidelines_en.pdf

³¹ More for the connections between EU Law and New Approach see in: Paul Craig, Grannie De Burca, EU Law, text, cases and materials. Third edition, Oxford Univ. Press, 2003. p. 1191 - 1192.

³² <http://www.cenelec.org/Cenelec/Code/Frameset.aspx>

lowers the cost of their production. If the manufacturer chooses not to abide by the Harmonized Standards, he must prove that his products conform to essential EU requirements using other means of his own choice (and make extra payment for it). Additionally, products manufactured according to standards not emanating from one of the European Standards Bodies are not always recognized by insurers, lending institutions, retailers, conformity assessment bodies or consumers, particularly when a European Standard already exists for that specific product.³³ The consequences of this are that manufacturers (especially from outside the EU) eager for EU market access become acceptors of EU Harmonized Standards and, through them, of the EU Legal rules (Directives).³⁴

If we have more general look over this situation, we will see that not only the manufacturers, but also the states to which these manufacturers belong try to adjust their legislation with the EU one. This process can be seen especially among the countries which have common free trade area with the EU, or it is forthcoming to have such relations in the future.³⁵

It should be mentioned that the European standards organizations may identify international or national standards (from or outside Europe) and adopt them as Harmonized Standards but this is very rare case.

The ITS in Hungary and Poland

After the collapse of the Socialistic Block many of the Central and East European countries applied for membership of the European Union. One of the significant consequences for the candidate countries of this application was that they became obligated to adopt EU standards, technical regulations, and certification practices or harmonize their own with EU requirements. The adoption process continued for many years, and was completed within a different time-frame and with various degrees of success in each candidate country.

Hungary

Since the 1990s, Hungary's economy has developed rapidly and has benefited from the largest number of foreign direct investments per capita of all former socialistic

³³ See more about it in: <http://www.cenelec.org/Cenelec/Code/Frameset.aspx> (p. 39)

³⁴ To some extent this is unusual, as the Directives according to Art. 249 from EU Treaty has binding effect for the Member States, not for individuals outside the EU.

³⁵ See for example: Report on the Approximation of Legislation in the Field of Standards, Technical Regulations and Conformity Assessment Procedures from the 4th Euromed Trade Ministerial Conference, Istanbul 21st July 2004. The Conference includes countries from Euro-Mediterranean Free Trade Area \the Area will start to works in 2010 according to the project. The report is available at: http://ec.europa.eu/enterprise/enterprise_policy/ind_coop_programmes/med/doc/f1947_en.pdf

countries in the region.³⁶ The country was a founding member of the European Bank for Reconstruction and Development and founder of CEFTA together with Poland and the then Czechoslovakia (1992). Because of this economic growth, Hungary has transformed rapidly from a processor of imported primary inputs to a supplier of intermediate and final products, many of them designated for Western markets.

On 1st April 1994 Hungary submitted its application for EU membership which, together with the high-speed economic development and pressure from the foreign investors and national manufacturers, accelerated changes in the national standardization legislation. In 1995 a new National Standardization Law (NSA) was issued.³⁷

Keeping in mind the main question of penetration of EU and International standards, we should consider Art. 5 (2) of the NSA. The text states that “International and European standards, if issued in the Republic of Hungary as standards, shall only be issued as national standards.” As it can be seen from the text, the Hungarian Standardization Law tries to maintain a balance between the International and European standards and mentions both of them on an equal basis. But a detailed look over the whole body of the Law will show that the Hungarian Standards Institution is expressly burdened with the task of implementing the European standards as national Hungarian standards, as well as to “[A]pply the deadlines specified by member organizations of the European standards organizations.” (Art. 8 (1) b)). This is confirmed also by the text of Art. 8 (1) m: ...obligation of the Institute to participate “[O]n request, in the preparation of Hungarian legislation based on directives of the European Union.”

Another evidence of this inclination of the Hungarian Standardization System can be seen from the statistic: At the beginning of 2001 in Hungary 9685 EU standards and technical regulations out of a total of about 11500 were being implemented; this made up about 45 percent of all Hungarian standards. By the end of 2005 the percentage of Hungarian national standards originating as European standards was 73.4%, 5.8% of which were adopted from among international standards. There are few Hungarian national standards, from other countries (0.1%). The percentage of purely national standards is 20.8% (March 2006).³⁸

³⁶ Companies as IBM, Sony, TDK, General Motors’ Opel, Ford, Audi, Suzuki and BMW have set up production and assembly operation plants in the country.

³⁷ Law XXVIII. Promulgated on April 28, 1995 and amended by law CXII in 2001.

³⁸ Data is according to the Information from the Secretary for International Affairs Hungarian Standards Institution (MSZT).

Poland

The development of Poland shares many similarities with that of Hungary. In 1991 Poland signed an association agreement with the European Community and its member countries, which came in effect in 1994. Poland was also among the founders of the CEFTA and hosts many foreign investments. Many Polish companies become subsidiaries of European, US and Korean companies.³⁹

The intensive investments of foreign industrial companies in the country pushed the Polish Committee for Standardization to set the alignment of the development of Polish standards with the **international** ones as a policy priority. In this, the Committee was supported by the Government and foreign investors, who tried to finance the development of national standards based on international standards, which in turn would help them by making exports easier.⁴⁰ At the same time, Poland was bound by the EU association agreement, which reflected in its Standardization policy. The new Act on Standardization⁴¹ promulgated in 2003 mirrors this. According to Art. 5 (2) of the Polish Standardization Act, “a Polish Standard may be a transposition of a European Standard or an International one”. According to Par. 4 from the same article, “Polish Standards may be referred to in legal acts, after being published in the Polish language.”

As can be seen from this short analysis Poland, like Hungary, tries to maintain a balance between the European and International standards with one small difference - when the Polish Standardization Act mentioned both standards in texts, “European” is always mentioned first, followed by “International” (bearing in mind that in Hungarian Law the order is opposite). The conclusion that can be drawn here is that the wording is not accidental and should not be underestimated in the observation of the text. It demonstrates the Polish attitude toward EU standards as an issue of major importance for national standardization. This is also the conclusion from the review of the correlation between the percentages of National, EU and International standards.⁴²

³⁹ See: Guide to the World's Major Emerging Economies. Business Monitor International. 2000. Vol. 1, (571-656).

⁴⁰ See more in: Profile of the Polish National Committee of the IEC. Available at: http://www.iec.ch/online_news/etech/arch_2003/etech_0703/spotlight.htm

⁴¹ Official Journal of Laws of 11th October, 2002, No. 169, item 1386.

⁴² According to the statistic, at 2004 about 90 % from the Polish standards are transposed from European, 6.7 % are International and 3.3 % are developed purely national standards. Source: <http://english.pkn.pl/>

The ITS in the developing countries

Bulgaria

Compared with Hungary and Poland, Bulgaria is a less-industrialized and less-developed country. It exports mainly raw materials, mostly to EU member countries, and imports all variety of goods, mostly made in the EU and neighboring countries. National privatization data shows that the biggest privatized companies are under foreign ownership, with over 60 percent of that ownership originating in the EU.⁴³

The catalyst for changes toward the acceptance of EU legislation and respectively - standards was the European Agreement concluded in 1995 for establishing an association between the European Communities and the Republic of Bulgaria.⁴⁴ Several texts from the Agreement stated an obligation for the country to harmonize the national legislation and standards with those of the EU (Art. 70, 75, 81, 82 and 83).

Several years later Bulgaria concluded agreements for the establishment of free trade zones with the countries of CEFTA (1998), Turkey (1998) and Macedonia (1999), which resulted in an increased trade between Bulgaria and these countries.

During the period 1990 - 2005 the Bulgarian Standardization Legislation suffered many changes, two of which are connected with the acceptance of new Standardization Laws (1999 and 2005). In contrast with Hungary and Poland, many of these changes were introduced under an incentive from EU authorities and standardization organizations.⁴⁵

In 1999 a new Act for the National Standardization (the first new one after 1990), which can be defined as the beginning of the transformation of the national standardization activities' regulation, was accepted. In 2005 Bulgaria promulgated the new National Standardization Act,⁴⁶ which is completely harmonized with the EU requirements in the area of Standardization. The main characteristic of the act is that it generally transforms the national standardization body from governmental to a non-governmental organization, and introduces the principles of European standardization.

Several texts from this law are important to our analysis. The first one is Art. 5 (2), which states that a regulatory act, containing technical requirements, may make

⁴³ Source: Web site of the Privatization Agency of Republic of Bulgaria: <http://212.122.167.183/apnew/Root/Files/stats/stats954.htm> (in English)

⁴⁴ OJ L 358, 31.12.1994, p. 0003-0222. Promulgated in the Republic of Bulgaria, SG 33, 20.04.1993. Effective from 1.02.1995.

⁴⁵ The reasons for this are quite complex, but can be explained with the several political crisis, slow privatization process, weak industrial sector, low number of big foreign investors and weak NGOs.

⁴⁶ Published in State Gazette, No. 88/4.11.2005, effective from 5.05.2006.

references to Bulgarian standards and/or parts of Bulgarian standards only in such cases where a regulatory act introduces EU *Acquis communautaire*. The next is Art. 47, according to which “European standards shall be introduced in an identical way to the Bulgarian standards” and through their introduction “[A]ny conflicting Bulgarian standards, approved at national level, shall be superseded.”

Regarding International Standards, Article 48 stated that “International standards shall be introduced on the initiative of technical committees on standardization, upon proposal by natural and/or legal persons”.

To date 31 % of the Bulgarian standards are pure national standards, 9 % are ISO standards, 56 % are European standards, 2 % are standards remained from the former Council for Mutual Economic Assistance and the rest are other standards.⁴⁷

For illustration of the co-existence of these standards in the national legislative documents can be pointed the Ordinance for requirements toward quality of the liquid fuels, conditions, process and method for their control.⁴⁸ In this Ordinance are used as references five standards - Bulgarian national standards, European standards recognized as Bulgarian, ISO standards recognized as Bulgarian, International standards recognized as European and Bulgarian and standards of the American Society for testing and materials.⁴⁹

Croatia

Republic of Croatia become independent from the then Yugoslavian Federation in 1991. The proces of development of the new country was hampered seriously by the Croatia – Serbian armed conflicts and political disputes, ended in 1998. In 2003 Croatia apply for membership in EU and in 2004 the accession negotiations began.

Croatia has trade relations mainly with trade partners from EU and neighbouring countries and tourism is one of the main national sources of incomes. The country has free trade agreements with EU, Turkey, Albania, Macedonia, Bulgaria and several other countries.

⁴⁷ Source: Review of the activities of the Bulgarian Institute for Standardization 2004 – 2005.

⁴⁸ State Gazzete, 66/25.07.2003.

⁴⁹ Respectively, these standards are: BDS 1751:1970, BDS EN 238+A1:2004, BDS ISO 3405:1998, BDS EN ISO 8754:2002 and ASTM D 1319:1995.

In 1998 Croatia was one of the first countries from the region to conclude agreement on co-operation with the Agency for Standardization and Metrology of the Republic of Macedonia.⁵⁰

According to the National Programme for the Integration of Croatia into the EU, in 2003 the Croatian Parliament accepts Law on Standardization⁵¹ and Law on Technical Requirements for Products and Conformity Assessment.⁵² The laws are concerned to harmonize Croatian technical legislation with that of the EU and to apply the New Approach Directives (NADs). The NADs are transposed into Croatian legislation as Ordinances and some of the Ordinances have already been adopted.⁵³

The content of the two laws explicitly shows that Croatian standardization system is orientated mostly toward EU. Art. 5, from Law on Standardization stated that “The Croatian Standards Body shall perform [standardization] tasks ... in accordance with the rules of European standards bodies” and “During the preparation of a European standard, the Croatian Standards Body shall refrain from taking any action that could prejudice harmonization.” The Law considers also that the Croatian standards shall be prepared by taking into consideration also international standards and national standards of other countries (Art. 9, (3))

In regard to the implementation of Croatian standards into national technical regulations the Law on Technical Requirements for Products and Conformity Assessment stated that such standards can only be those that transposing harmonized European standards (Art. 5, (5)).

The close links between Croatian and EU standards can be seen also from the numbers of standards, accepted by Croatia till 2004.⁵⁴

Some conclusions about initiation of the International technical standards in the observed countries

The analysis reveals that the legislations of the economically strongest EU, Japan and USA are more restrained from initiation of International technical standards or standards, developed by foreign standardization bodies. These countries have quite

⁵⁰ The text of the agreement is available at: <http://www.vlada.hr/zakoni/mei/Chp01/Int%20agreement%20-%20MACEDONIA.pdf>

⁵¹ Official Gazette No. 163/2003. In force from January 1, 2005.

⁵² Official Gazette No.158/2003.

⁵³ See more in: UNECE, TRADE/WP.6/2005/3, Review of developments in standardization activities in the field of regulatory cooperation at the international, regional and national levels. Submission from Croatia. http://www.unece.org/trade/ctied/wp6/documents/wp6_05/wp6_05_03e.doc

⁵⁴ At 2004 Croatia accept 42 % EU Standards, 35 % International Standards, 02 % National, 0.9 % German and 21.8 % International & European. Source: <http://www.hzn.hr/english/normubgraf.html>

big number of their own national (European) standards, which by the export of technologies and goods are spreading abroad in different regions.

These developed countries also enjoy greater opportunities to influence on making ISO standards, which as Eran Shamir – Borer stated, leads to development of standards that are disadvantageous to developing countries.⁵⁵

The legislations of the middle size economies of Hungary and Poland are open only to those standards, existing in the European trade area to which they belong. This can be interpreted as indicator that these countries are opened for the “regional” International standards, developed by EU standardization bodies. It is worth to mention here that Hungary and Poland have relatively small number of their own national standards, or standards, different from EU standards.

The legislations of Bulgaria and Croatia are open for penetration of both European and International standards and the percentage of purely national standards in these countries is bigger in comparison to that in Hungary and Poland. The statistic shows also that the trend in these countries is to introduce standards existing in the EU trade area.

Many factors shape this standing, but the attention here will be directed only to several issues that have link with the penetration of the Global Administrative Law in some way.

The first issue is, the direction of movement of standards from strong economies toward other and the influence of the State as government and economical factor over this movement.

We have seen previously that the work over acceptance and keeping of national standards is non-governmental (or quasi-governmental) work performed mainly by the national standardization organizations. However, the main characteristics of the standardization activities remain regulated by State through the national legislation.⁵⁶ The reason is that from economic point of view regulation of standards on national level is kind of supporting policy for national industry. This has for result that economically strong countries prefer to keep their standardization legislation sovereign from outside influence as the standards contribute to creating and upgrading competitive advantages

⁵⁵ Eran Shamir-Borer, The Evolution of Administrative-Law Norms and Mechanisms in the International Organization For Standardization (ISO). Paper, presented at the GAL Conference – Viterbo, 2006.

⁵⁶ Let's remember the fact, that practically all countries in the world have standardization regulations and also, that no any member country from EU abolish its national standardization rules after joining to the Union.

for the country if not in a world scale in a limited region. As developed the national standards are, as much competitive the national industry is.⁵⁷

This fact in great extent can explain why the standards are spreading from the developed toward other economies. In this relation we should have in mind that the tough technical standards (which are usually made by developed countries) are spreading faster than any international rules. The reason for this is simple - nowadays sophisticated buyers appreciate the new safer, cleaner, low-energy consuming goods considerably long before governments do the necessary to implement their standard in the national legislation framework.

The second issue is that more of the developing or emerging economies have been standard takers, not standard makers. Related to this is the question about the source from which they take the standards.

As a rule, in the case with industrial standards, the standard takers are more open to accepting of the standards of markets that are important for their export. Usually, the countries strive for regional markets and accept the highest regional standards to urge adherence to them because of the importance of the market for them and the influence of large foreign investors.

As a rule, a binding of the national standardization system of developing economies to the regional market has two negative consequences. Firstly, **such binding retain** the development of the national standards.⁵⁸ Second is that such national standardization system is practically closed for penetration of standards and related to them legislation, coming from regions outside the targeted market.⁵⁹ The middle size economies Hungary and Poland are good example for this.

The small size economies of Bulgaria and Croatia are deprived from large scale European investors, which reflect over the number of accepted European standards – they are lower per cent than these in Hungary and Poland. These countries are not linked with only one market and are principally more open for acceptance of different foreign standards than bigger and biggest states. Both countries participate in FTA with other countries which has for consequence that they are more inclined to accept different foreign standards from different sources and regions. The reasons for this probably can be explained with the benefits that small countries have from trading

⁵⁷ See: Michael Porter, *The Competitive Advantage of Nations*. 1998, The Free Press. (647).

⁵⁸ See: Samuel Krislov. *How nations choose product standards and standards change nations*. University Pitsburg Press. 1997, p. 23.

⁵⁹ See: Consumers, *Product Safety Standards and International Trade*. OECD report, 1991, p. 11.

with any other economically stronger country when this is performed through one or several FTA.⁶⁰

As third issue could be mentioned the sophisticated dependence between the technology, export of goods and adoption of foreign standards and legislation. This can be seen in the case with countries which exported goods are not so linked with standards requirements of the region for which they are designated (for example export of raw materials). These countries are less open toward acceptance of foreign standards and respectively – they are not so open for adoption of the legislation of the respective markets as simply they do not need it.⁶¹

Next comes the text of Art. 2.4 of WTO/TBT Agreement. Regardless of the existence of this common rule encouraging all WTO member countries for using of relevant International standards in the national technical regulations, the rule does not work equally in the observed countries.

It can be said that practically developed countries do not implement this text, because in general they implement only their national tough standards. Also, they try to convert their national standards into international one. Middle size economies implement Art. 2.4 restrictively as they accept international standards from limited sources. Probably only the developing countries implement Art. 2.4 completely, as they are more open for accepting of international standards.

On the last place, we can mention the fact that developing countries can be opened for acceptance of international standards, but it does not mean that they can afford the common tough international standards. Generally speaking, many of the developing countries (especially the poor one) have not possibilities to reach the level of standardization of the developed countries or they consider that tough standards are too heavy for them. In this case they simply close borders for entrance of these standards (respectively – for standardization legislation) and imply their own, low cost standards, or they accept other foreign cheaper standards. This fact is considered by the TBT Agreement which provides that because of the socio-economic conditions in

⁶⁰ See: Joaquim Ramos Silva, Trade between asymmetrical democratic countries. *Journal of Economic Studies*, 26 (1999), 4/5. (412-426) 415 and Helleiner, G.K. (1996), "Why small countries worry: neglected issues in current analyses of the benefits and costs for small countries of integrating with large ones", *World Economy*, Vol. 19 No. 6, November, (759-763) 759.

⁶¹ This situation can be seen from the research of Brenton, Paul; John Sheehy; Marc Vancauterem: Technical barriers to trade in the EU: importance for accession countries. In: *Journal of common market studies*. 39 (2001) 2: 265-284. The authors, analysing the number of exports of goods that are subject of technical regulations from Central and Eastern European Countries to EU stated that Poland, Hungary and Czech Republic accept more EU technical regulations as they export more such goods than Balcan countries.

the developing countries they “should not be expected to use international standards ... which are not appropriate to their development, financial and trade needs” (Art. 12.4).

This means that in a bad scenario some developing countries probably will deviate from the common International standards, which will lead them away from the movement toward using of common International standards and will has for consequence forming a group, where different standards will be applied. The TBT Agreement trying to solve this problem with introducing possibilities for enabling to these countries special grants (Art. 12.8), but at all, this can not help them to join to the developing countries, as they will remain different from them.

Little beside from the discussion but with important meaning is the issue about the methodology of acceptance of ITS in these countries. This issue also can be obstacle for initiating of ITS as developed countries can afford more scrutinized methods for checking of ITS standards while developing countries can not afford such expensive procedure.

The initiating of International Technical Standards as possible model for penetration of GAL

Considering the deductions about penetration of ITS and commonalities between them and GAL rules we can say that the way of penetration of GAL rules probably will works in roughly the same manner.

First of all, having in mind that some countries do not favour penetration of ITS, other are opened for regional standards and third are opened for both of them, we could suppose that GAL rules probably also will not be disseminated on equal base in all countries.

In the previous chapter was stated that ITS are disseminated mainly on regional principle, following the usual flow of technologies and goods from developed to developing countries. On the next place, the contemporary international relations show that many countries are participants, or try to become members of regional economical unions or alliances, where many common rules are in force. In a principle, these unifications try to establish common market for all participants.

In relation to these facts we can suppose that the spreading of GAL rules probably will be from the source trough such regional incorporations toward the end addressers.

The main positive argument about this idea probably is that the regional approach will ensure relatively equal environment in which the GAL rules will be disseminated easily in the individual regions. As second argument can be pointed that GAL rules can be adjusted according to the level of development of the region, which perhaps will be easier than to adjust them to each individual country. The third argument is that this approach allows the specifics of given regions such as big cities, individual municipalities, industrial areas and religious local communities to be considered from GAL rules.

The regional approach naturally leads us to the question about the source from where the GAL will be spread among local communities. We can suppose for example that the local sources will be the regional leading countries because of their developed systems, which presuppose they will be the first acceptors of GAL rules from the main source. But as we saw from the analysis of standards, the developed countries are not so prone to accept foreign standards and rules. Also, we have the example of the US – Japan relations showing that the attempt to impose administrative rules from one to other country is not always successful. In the so-called Structural Impediments Initiative of the American government and businessmen for harmonizing the Japan's domestic institutions with those in the US this was the case.⁶² As the experience from this Initiative shows, the number of the US proposals being urged in Japan had opposite consequences from initially intended.⁶³

That is why probably the winning formula will be a model for regional introducing of GAL rules, first in more open for foreign rules countries from each individual region (which principally are the developing countries). In this way, the introduction will be decentralized among the regional countries and could be equal in many of them. It will also allow smooth adjustment of the whole regional system, as the developing countries need more time for changes.

The above model for the direction of movement of GAL rules should not be accepted as fixed because usually the member countries of a region are not constant in their development and are differently developed in various realms. This opinion came

⁶² The Structural Impediments Initiative began in 1989 with several meetings between the representatives of governments and business of the two countries. The Initiative was designed to deal with domestic structural problems limiting trade on both sides. In 1993 the Initiative was ended, but the results from the negotiations have been used as a framework for further dealing with United States-Japan bilateral relations.

⁶³ See: Gary R. Saxonhouse, Japan, SII and the International Harmonization of Domestic Economic Practices, 12 Mich. J. Int'l L. (1990) (450-469) 469. The author notices that the reason for this was the asymmetry in the US – Japanese trade relations during 1980's. Probably, the reason is not only in asymmetry, but also in the approach of US to change the Japan structures instead of mutual harmonization.

also from the development of standards. Historically, the American firms led in the export of pollution control equipment and services as a result of the high national standards in this realm. Respectively, they were the main source of standards and legislation. But after introducing of higher pollution requirements in EU, comparing with USA, the Germany, Sweden and Denmark companies that produced such equipments have moved ahead of the US in supplying the world market and become standard exporters. Another example is in the nuclear power plants technologies, where USA was once a major exporter. Uncertain and slowly applied safety regulations had for effect loosing of this major position.⁶⁴

The regional approach for introducing GAL rules can be useful also in the case with the countries, which national policy and economy are oriented mainly to one foreign system. As they probably will not be so opened to penetration of rules coming from source, different from the usual for them, using the regional approach will help to transfer the GAL rules from regional to national level.

Next is the matter on the toughness of applicable GAL rules. The question here is if they should be equally tough everywhere or they should be adjusted in conformation to the average level for each region.

Having in mind the situation with fast spreading of tough technical standards, the anticipation here could be that the stronger and effective in international aspect GAL rules are, the greater opportunities for their acceptance world wide are. But the reality probably will be different. The tough international rules usually make some countries and individuals winners and other losers, especially when the question about accountability arises. Let's remember that tough foreign standards have been welcomed more by the customers in countries of import, as they are main winners from the new standards. Opposite to this, the industries in importing countries have been not so happy, as tough standards burden them with new requirements, expenses and make them more accountable. As a result, they become losers at the moment of introducing of new standard.

Undoubtedly, the introduced rules should be tough as this is the way for attaining the goals of GAL. But if the idea for penetration trough regions will be applied, than probably the best way for this will be if GAL rules are tough according to the specifics of any individual region. This also will help in the case with the countries that are far below the average level of development. As we saw, the risk with them is that

⁶⁴ The example is given by Michael Porter in *The Competitive Advantage of Nations*, 1998, The Free Press. (648-649).

they can deviate from the global movement and form a group, where different rules will be applied. The only possible way to avoid this and to implement GAL rules in these countries probably remains the regional unification with other countries with similar level of development. This means again application of GAL rules, considered with the regional specifics.

Factors that determine the possible regions for spreading of GAL rules

The previous part of the research ascertained a theoretical model of the regional approach through which the rules of GAL could be spread. The question arising from this statement is what factors can be used to determine the territory of these regions? Three factors will be examined here as they are may be the most important for outlining of the different regions.

Free trade areas

The proposed approach for forming the GAL regions does not fix the countries by their affiliations to one or other legal or political system,⁶⁵ or by whether they are much or less liberal and democratic, or are they developed or developing.

The criterion here is the existence of trade activities among the countries which as result leads to creation of common free trade areas (FTA). This has for consequence establishing of common or close rules for movement of people, capital, services and goods, which by my opinion creates equal environment and facilitates penetration of GAL rules.

The idea is that the different free trade areas (FTA) could form different regions, where respective GAL rules will be applied. Probably, using the FTA is the easiest way for forming GAL regions, as there are more than 20 FTA with important meaning for the world trade and their number is increasing. The study of International technical standards showed us that the countries, participating in FTA, are friendlier toward acceptance of international standards. It can be supposed that these countries will be friendlier toward acceptance of GAL rules as well.

The example with the stages through which the EU expands during the years and the plans for future undoubtedly confirms this statement.

⁶⁵ See this approach in Konrad Zweigert, Hein Kötz, Introduction to comparative law. Translated from the German by Tony Weir. (3rd rev. ed). Oxford University Press, 1998, p. 63-322.

Areas with common culture

It was mentioned that successful penetration of Japanese industrial standards in East Asia has not only technical, but also cultural basis linked with the “East Asian common culture block”. It is worth to discuss shortly some characteristics of this block considering the perception of the state as social phenomenon and related to this question about penetration of GAL rules.

The matter here is that GAL excludes to some extent the power and influence of the state, as the sources of GAL usually are non-state international organizations. This means that GAL organizations could be in position to have influence which sometimes exceeds the influence of a state. In other words, in the “classical” model of spreading the GAL rules the state has subsidiary role and generally do not have so significant power.

In Asia there is other cultural perception about the state. As Jeong-Pyo Hong writes “Asian states continue to have great cultural force and not will soon disappear.”⁶⁶ As we saw from the DVD case in Japan, the State through its administration can have great influence in areas, which are usually preserved for private companies. All this can be a sign that probably the idea about the subsidiary role of the State in GAL will not work properly in East Asian countries.

Other distinguishing feature is between East Asian and European countries. It is well known that in EU the states do not compete with each other, but work together in the name of one strong European Union. In East Asia there is still no such cooperation among the states and they compete each other, which makes difficulties ahead of regional integration, in addition to the other historical and political obstacles.

These peculiarities lead us to the conclusion that the East Asian culture gives to the State significant role and people are more respectful to rules, made by the State than to rules made by non-national and non-state authority. This means that probably the US approach for introducing GAL as system of “loosen” regulation in which not the State but the private players and market powers will have basic role will come into collision with the “East Asian understanding” for the State as institution and for the need everything to be clearly regulated.

⁶⁶ See: Jeong-Pyo Hong, Regional integration in Northeast Asia: Approaches to integration among China, Korea and Japan. 2004, Seoul, Korea: Korea Institute for International Economic Policy, CNAEC Research Series 04-04, 2004, p. 9. Available at: http://www.kiep.go.kr/leng/e_sub03/sub01_2.asp?sort=01&seq=20050309165256&p=6&keytype=&keyword=&pgsize=15

As result, it is most likely that the spreading of GAL rules in the East Asian region should be subject to a special for the region approach in which the State plays more significant role.

Other important issue is the fact that the different standards are flexible in different way considering the local culture and business customs in different markets. In this way of thinking it should be pointed for example the fact that the technical standards are not as flexible as Financial or Governance standards.⁶⁷ This means that probably the GAL rules will be adopted easily in some cultural areas while in other areas they will meet a lot of obstacles from cultural nature.

Religious areas

When David Ricardo developed the theory of comparative advantage, he focused over the differences between nations due to climate and technology. Years ago Alan O. Sykes pointed, that “the climate” in Ricardo’s definition should be understood not only as geographically, but also as “social climate”.⁶⁸ After September 11, 2001 it is most likely that in Ricardo’s definition should be included also the “religious climate”.

If we address the idea about religious climate to the question about penetration of GAL rules we probably should consider the existence of religious law in different countries and in different social activities (especially financial transactions, trade with some kind of goods, etc).⁶⁹ Then we probably will state that on its way GAL will meet many religious rules which have different significance and application in different parts of the world. One example is the decision of the English High Court where both the principles of English and Shari’ah Law in area of banking are given respect.⁷⁰

Religious law should be considered because of its different structure in comparison with the structure of GAL. At the moment, GAL structure is accepted as centralized system, usually directed by internationally acknowledged organization with administration and mechanism for application of accountability.

⁶⁷ See: Morais, Herbert V.: The quest for international standards: global governance vs. sovereignty. In: University of Kansas law review. 50 (2002) 4: 779-821, (809).

⁶⁸ See: Alan O. Sykes, Product Standards for Internationally Integrated Goods Markets. The Brookings Institution, Washington, 1995, p. XVII.

⁶⁹ For ezample, the Shari’s Law stated special rules for mineral investments, which means there are special rules related not only to the movement of these capitals, but also of these goods. See: Walied M. H. El-Malik, Minerals Investment under the Shari’a Law. International Energy and Resource Law and Policy Series. 1993.

⁷⁰ See: Shamil Bank Of Bahrain Ec V Beximco Pharmaceuticals Ltd And Others, Court Of Appeal (Civil Division) [2004] Ewca Civ 19, [2004] 4 All Er 1072, [2004] 2 All Er (Comm) 312, [2004] 2.

The religious law appears opposite to this. There has been no centralized, pluralistic and consisting of official, authoritative versions and local varieties that may exist side by side, influencing each other. It can be subject to change in response to local customary law and to the law of national states, which makes the religious legal pluralism more and more complex.⁷¹ The other specific question regarding the religious law is the specific system of accountability of religious organizations and their members.

These characteristics of the religious law put the question about the possibility of future joined existence of the GAL and Religious Law. Probably in countries where different religious communities exist, GAL rules will not work in the same way as in countries where the number and significance of religions is small.

Conclusion

This survey has showed that penetration of GAL rules into national legislations probably will meet the same obstacles on its way as the spreading of International Technical Standards. The proposed model for spreading of GAL rules in individual regions, shaped by factors as common trade rules, markets, cultural and religious ideas probably can be good instrument for avoiding some of these obstacles, but this needs future research and discussions.

However, the survey clarifies that the specific characteristics of each region will make impossible using principles of the Global administrative law, derived only from the legal principles of the EU, representing the continental legal culture, and the US, representing the common law legal culture, as they currently do not represent all legal cultures and legal systems in the world.⁷² Actually, the European and US systems of Administrative Law can be used as good example of the regional approach helping to spread GAL rules in given regions. Both systems are aggregations of common trade rules, common cultural and to a big extend religious traditions. The fact that they are quite different from each other is not obstacle on the way of spreading GAL rules in these regions nowadays. This circumstance is good indicator that the idea of forming GAL regions should be studied in the future.

⁷¹ See: Benda-Beckmann, Keebet von: Globalization and legal pluralism. In: International law forum. 4 (2002) 1: (19-25) 25.

⁷² More about this idea see in: Charles H. Koch Jr., Globalization of Administrative and regulatory practice. In: Admin. L. Rew. 54 (2002) 1: (409-414) 414 and Richard B. Stewart, U.S. Administrative Law: A Model for Global Administrative Law. IILJ Working Paper 2005/7, Global Administrative Law Series, www.iilj.org.