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Comparative Perspectives for
Public Administration and Administrative Law

Edited by

Dominika Cendrowicz
Agnieszka Chrisidu-Budnik

Wrocław 2018

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PREFACE

In the present era of globalization and liberalization, the interaction between the nations of the world is increasing. These processes are causing various cultures – legal, social and organizational – to intertwine, while the increase in interest in legal systems other than one’s own, organizational structures of public administration, its staff and methods of operation are among the consequences of this interaction. It is currently impossible to perceive public administration and administrative law purely in the national context. Efforts to optimize the functioning of one’s own public administration and applicable system of administrative law should include the process of making comparisons. The comparison of models of public administration and administrative law for various countries is a methodological operation of a cognitive nature. However, in order for comparative law studies to fulfil a cognitive function, studies need to be prepared for everyone, the subject of which is a comparison with foreign experience of an adequate model of research. At the same time, such a comparison enables cognitive perspectives to be opened up to the systemic solutions of other countries and consequently, knowledge is increased on how to improve one’s own system of organization of public administration and administrative law.

Alongside studies of the law and systemic institutions of other states, an area of research is developing in the area of business administration and public management, which has the objective of identifying the differences between the logic of the functioning of public and private organizations. Such a direction of research – a comparison of the public sector and the private sector – has become a subject of more extensive and systematic theoretical and empirical research. The literature on this subject is relatively extensive, thereby creating the ability to use findings for various, primarily cognitive, but also practical objectives.

The articles published in the book constitute the outcome of the lectures delivered during the Second Seminar of Students of Administration in International Organizations, Bachelor of Business and Administration and International and European Law programmes *Comparative Perspectives for Public Administration and Administrative Law*, which was held at the Faculty of Law, Administration and Economics of the University of Wrocław on 14 March 2018. Discussions were held during the Seminar on the organizational, social, cultural and legal conditions of the functioning of the public administration of various countries and debates were held on the logic of the operation of private sector and the public sector organizations in various countries. The lectures given at the Seminar, the articles prepared on their basis and the high attendance level at the

Seminar are indicative of the fact that there is still a need for comparative studies in the area of public administration and administrative law.

This monograph consists of four parts. The first part of the monograph applies to the need to conduct comparative research into public administration and administrative law, as well as compare the logic of the functioning of the public and private sectors. The second part contains articles on the problems of comparative public administration. The third part contains articles presenting issues from the area of comparative administrative law. The fourth and last part concludes and ties together the considerations set out in the preceding parts. It contains an attempt to answer the question of where public administration and its regulating administrative law are heading today.

We would like to express our thanks to all the authors of the publications contained in the book for their efforts in their preparation. We would also like to thank Professors Jerzy Korczak and Jerzy Supernat, without whose help it would not have been possible to organize the Seminar. We would like to give our separate acknowledgments to Professor Łukasz Machaj for his help and support without which this publication would not have been produced.

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Introduction

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THE BENEFIT OF USING THE COMPARATIVE METHOD IN STUDYING PUBLIC ADMINISTRATION

O POŻYTKACH Z BADAŃ PRAWNOPORÓWNAWCZYCH NAD ADMINISTRACJĄ PUBLICZNĄ

Summary

The article focuses on the origins and history of comparatist studies, the objectives of this research method, especially as regards administrative law, as well as possible results of its use, which can be used in legislation, practice administrative, case-law, and finally in the study of administrative phenomena. A separate thread of the article is the presentation of the achievements of Wrocław school of administration, whose particular feature is the use of administrative comparatist.

Keywords

public administration, comparative method, Wrocław school of administration

Streszczenie

Artykuł poświęcony jest omówieniu genezy i historii badań prawnoporównawczych, założeń tej metody badawczej, zwłaszcza w odniesieniu do prawa administracyjnego, a także możliwych wyników jej stosowania, które mogą być wykorzystywane w legislacji, praktyce administracyjnej, orzecznictwie powstałym na jej tle, a wreszcie w nauce zajmującej się badaniem zjawisk administracyjnych. Osobnym wątkiem artykułu jest przedstawienie dorobku wrocławskiej szkoły administratywistycznej, której szczególną cechą jest stosowanie komparatystyki administracyjnej.

Słowa kluczowe

administracja publiczna, metoda prawnoporównawcza, wrocławska szkoła administratywistyczna

INTRODUCTION

The second Seminar of Students of Administration in International Organizations, Bachelor of Business and Administration and International and European Law programmes at the Faculty of Law, Administration and Economics at the University of Wrocław entitled

Comparative Perspectives for Public Administration and Administrative Law encourages a deeper reflection on issues of fundamental importance to the essence of this project. In other words, the answer to the question about the need and consequence of applying the comparative method for studying administrative phenomena.

As Professor Wieńczysław Józef Wagner von Igelgrund zum Zorstein, one of the leading representatives of Polish and American comparative studies, rightly pointed out, “Whoever knows only his own law, does not know his own law”. This statement leads us directly to the answer to the first of the questions posed, as it is impossible to examine the essence of any institution of national law today without using comparative research, because, in contemporary law, almost no state has an institution which is solely domestic or even of national provenance. Contemporary law is not only a result of intra-state evolution, but also of numerous influences of foreign law, which are diverse in terms of intensity, scope and quality, while a comparison of the features of relatively homogeneous legal institutions enables the establishment of the degree of identity, similarity or differences between them through a comparative study, revealing their common roots or influences of other legal cultures that are common to them.

1. The Growth and Development of Comparative Studies: A European Perspective

The reasons for this phenomenon can be found in the times of the original tribal communities, when their rivalry for territories encouraged their leaders to conduct a comparative analysis of the enemy’s forces, but also to take advantage of their structural, military and economic solutions. The subsequent development of civilization meant that this process became intensified and enriched. Of particular importance was the development of trade, which enabled non-antagonistic contacts to be made between the first countries of that time (e.g. Mesopotamia and Egypt). The first descriptions of foreign law and political systems, as well as their comparison with the law and their system and even the first examples of using the results of this comparison to create their own law originate from those times. Most of the examples are provided by the area occupied by today’s Greece, where, in ancient times, there were hundreds of city-states, each of them based on their own law and their own very diverse political systems, from democracy to tyranny. Although we mention them most frequently because of the numerous wars between them, despite the conflicts and the dangers that arise from them, the representatives of the two most warring cities – Sparta (Likurg) and Athens (Solon) – travelled around the world to learn about foreign institutions of law, so as to perfect their own state, like Solon, in his reforms from the sixth century BCE. It was due

to these same travels, description and comparative analysis of the Hellenic city-states that Plato, first, in the treatise *Laws*, presented a vision of the ideal state system after which Aristotle, in *The Constitution of the Athenians*, presented his vision of the ideal city-state compared with the solutions of 158 cities that were described and critically assessed. Theophrastus of Eresos went furthest in his comparative research. In the third century BCE, in the book named *Laws*, he analysed all policies existing at that time, indicating the differences between them and, in particular, the criticisms he considered inappropriate.

The most perfect example of the creative use of cognition of foreign law are the beginnings of the Roman Empire, when the Romans, who were at a lower level of civilization, conquered the city-states of the region of the much better developed Hellenic culture. The commission of the decemviri that was appointed at the time for writing the laws of the Twelve Tables used the law of the Greek cities. Meanwhile, when the Empire was being converted to Christianity in the third and fourth centuries CE, a comparative work, *Collatio Legum Mosaicorum et Romanorum*, was written, in which a comparative analysis was made of the writings of classical lawyers from the *Law of Moses* to demonstrate the lack of contradiction of Roman law with respect to biblical law (hence the alternative name of this document *Lex Dei*). The Middle Ages, which immediately followed this period, were not conducive to comparative law studies because of the dominance of Roman and Church law on the continent, so it is hardly surprising that John Fortescue's treatise, *De laudibus legum Angliae*, devoted to the comparison of English and French law (its resumption in English, *The Governance of England* appeared in 1885) only appeared on the British Isles in 1470.

It was only the Renaissance period, with its return to ancient times, but also the era of great geographical discoveries, which gave the opportunity to encounter non-European societies and legal cultures, that encouraged and even forced the return of comparative law research. There are two trends in comparative law studies, namely the search for the ideal state system and a more pragmatic use of the results of the comparison for *ad hoc* solutions. The criticism of the English monarchy and those of other European countries led Thomas More to *Utopia* (1516), as it led Tommaso Campanelle in 1602 (*Civitas Solis Poetica. Idea Reipublicae Philosophicae*) to the ideal monarchy, whereas it led Jean Bodin to praise the *Six Books of the Republic* (1576) of the French absolute monarchy. Pragmatist Niccolo Machiavelli in *The Prince* (1515) encouraged the rulers to observe the governments in other countries and take advantage of their solutions that enable them to more effectively achieve their objectives. Even the more pragmatic professors of law of the German universities: Samuel Stryck in Frankfurt in 1690 (*Specimen Usus Moderni Pandactorum*) and Georg Struve in Saxon Jena in 1658 (*Syntagma Iuris Civilis*

Universi) focused on using the institutions of Roman law to create an independent civil law in the German lands.

In the historical assessment, we owe the greatest achievements of the Enlightenment to the use of comparative law studies, because both John Lock, when presenting the theory of classical republicanism in *Two Treatises of Civil Government* (1690) deduced it from a critical analysis of all previous state systems, and Jean-Jacques Rousseau conducting a critical analysis of ownership rights and the monarchical system in *Discours sur l'origine de l'inégalité parmi les hommes* (1755) proposed the idea of a new state system based on the sovereignty of the people (*Le contract social*) in 1762 and, finally, Charles Louis Montesquieu, after the criticism of the French system in 1721 (*Lettres Persanes*) proposed a concept in 1748 (*De l'esprit des lois*) of the separation of powers, which remained a universal concept adopted by the majority of the later emerging states. It was already at the end of the seventeenth century that the awareness of the benefits of comparative law studies was so great that, in the methodical paper, *Nova Methodus Discendae Docendae Jurisprudentiae*, in 1667, Gottfried Wilhelm Leibniz presented the vision of *Theatrum Legale Mundi*, for which he undertook to create a network of research academies for conducting research into law of all times and throughout the whole world, bringing about its emergence in Berlin (1700) and St. Petersburg (1714), whereas his death stopped work on the emergence of such an academy in Vienna.

The turn of the eighteenth and nineteenth centuries related to the founding of the first republican state on the American continent and the fall of the absolute monarchy in favour of the establishment of the first French Republic is sometimes referred to as the “constitutional laboratory”, because throughout the nineteenth century, new countries emerged with new regimes, all as a result of the rapid development of comparative law research. They will be favoured by the effects of the industrial revolution, drawing with them not only better conditions for communication, but also new conditions of social life and a political revolution, dragging with them codification processes of the main branches of law and, in particular, the universal constitutionalization of state systems, especially in the second half of the nineteenth century. Comparative law studies crossed the borders of the continent for the first time when Alexis de Tocqueville, who had been sent by the French government to the United States, conducted a comparative law analysis of the republican American and French regimes (*De la démocratie en Amérique*) in 1834–1840, and then, also for the first time, applied a legal/historical comparative law study evaluating the consequences of the Revolution for France in 1856 (*L'Ancien Régime et la Révolution*). At that time, comparative law studies started to be read at the faculties of law of European universities (1835 Collège de France, 1846 Paris University, 1869 Oxford), comparative law research societies are formed (1869 France – So-

ciété de législation comparée, 1878 Germany – *Internationalen vereinigung für vergleichende rechtswissenschaft und volkswirtschaftslehre*); specialized scholarly publications also appear (1834 France *Revéue Étrangère de Législation*, 1869 Belgium *Revue de Droit International et de Droit Comparé*), and a special Foreign Legislation Office was even established in 1876 in the French Ministry of Justice to translate into French and publish acts of law of other European countries, which was especially useful in the case of business contacts.

The twentieth century starts a very significant event – the First International Congress of Comparative Law organized in Paris in 1900. This idea will be continued by *l'Académie internationale de droit comparé (International Academy of Comparative Law – IACL)* which was established in The Hague on 13 September 1924, which organized congresses in The Hague in 1932 and 1937; after the interruption caused by the Second World War, the regular meetings every four years in different cities around the world were restored, starting from 1950 with a congress in London (the 20th International IACL will be held in 2018 in Fukuoka, Japan). It was accompanied by the process of the emergence of further research institutes (in 1916 in Munich, in 1926 in Berlin and in 1931 in Paris), while *The American Society of Comparative Law (ASCL)*, which publishes *The American Journal of Comparative Law*, was established after the Second World War, in 1951.

Three main research directions were typical of comparative law studies of the twentieth century: the first focused on legal/historical comparative studies with strong elements of sociology of the law, the second focused exclusively on positive law institutions, the comparison of which was supposed to bring about the establishment of common principles of universal law, while the representatives of the third direction developed this idea by striving to create a universal system of law that would replace the particular system of national law [Tokarczyk, 2008]. None of these dominated comparative law studies as such and each has its continuers, although undoubtedly the second and third are more frequently present in the works of comparatists in the past and in contemporary times. This was undoubtedly influenced by the political events of the twentieth century, the period of fascism, the Second World War and the period of so-called Cold War, which were not conducive to comparative law studies at all and decidedly historical references. Overcoming the hostility of the political camps, especially the collapse of the Soviet Union, freeing the countries of Central and Eastern Europe from its domination, opened new opportunities for mutual comparative law research, but directed rather towards positive law. Likewise, the second factor, namely the fact that the systems of the continental law culture and the common law system are getting closer to each other gives greater encouragement to conduct research into the applicable law than historical considera-

tions, especially when the move started away from directly comparing legal institutions towards studying their functionality, namely searching the legal system for an equivalent of a foreign law institution fulfilling a specific function.

For the practical benefits of comparative analysis in the global dimension, the establishment of *L'Institut international pour l'unification du droit privé* (Unidroit – *The International Institute for the Unification of Private Law*) by the League of Nations of the time in Rome in 1926 played a significant role, initially as an auxiliary unit of the League and, after 1940, as an international government organization, currently with 63 members from 5 continents. Its task is to prepare draft international conventions (it has already prepared over 70) to unify legal solutions mainly in the area of commercial law and broadly understood civil law, as well as to develop model legal solutions for use in national law, legal principles promoted in legal guides and draft contracts which have been prepared and published. Furthermore, continental institutions for the unification of the law are emerging on individual continents in line with the *American Law Institute* (ALI), which was established in 1923. The European Law Institute (ELI) was established in Paris, at the Founding Congress in 2011, as a response to the European Union's needs for the appropriate orientation of European law and its implementation at the level of the member states Zimmerman [Zimmermann, 2011]. The Institute has the objective of developing the activity of the European Jurists' Forum in the European dimension, which has been limited to date, which has been held in two-year cycles since 2001, but has never had the ambition of becoming an institutionalized form of a consultant or even a critic of the legal solutions adopted by the European Commission [Zimmermann, 2011]. This is the objective set for itself by ELI. The advantage of the Institute is to combine theoreticians and practitioners of the law in it, as well as to enable a joint analysis of certain projects from the point of view of various families of law: Romanist, Germanic, Nordic and common law.

2. The Growth and Development of Comparative Studies: A Polish Perspective

Compared with the brief relationship with the history of global comparative law studies, especially European law, the features of the roots and achievements of Polish comparative law studies require a separate presentation. The lack of Polish statehood in the nineteenth century, and hence at the time of the birth of European comparative law studies in France and the German-speaking countries, Polish lawyers (practitioners and theoreticians) could only deal with foreign law, the law of their partitioning states (respectively Russian) [Okolski, 1876], Prussian and Austrian law) [Kleczyński, 1876]. In a way,

it naturally made comparatists of them, which, many years later, Franciszek Longchamps aptly described as “Poland is a place of historical drafts, history has made us comparatists” [Rutkiewicz, 1966, p. 200]. Even so, works also appeared then, which went far beyond the corset of the partitions [Konitz, 1886] and even described the common law¹ [Konitz, 1886] model to the Polish reader, which was completely unknown to him. It was only the regaining of independence in 1918 and the reconstruction of statehood that opened not only the freedom of comparative law research to representatives of Polish legal studies, but it was even expected that their results were to be used in the legislative work of the young state². The high rating of the first Act on the Civil Service, or the establishment of the Act Unifying the System of Territorial Self-Government is largely due to such comparatists as A. Pragier [Pragier, 1924], J. Panejko [Panejko, 1926], T. Bigo [Bigo, 1928], S. Wacholz [Wacholz, 1934] and S. Starzyński [Starzyński, 1926].

The outbreak of the Second World War not only ended the existence of the Second Polish Republic, but also interrupted the natural conditions for conducting research, including comparative law research. After its end and after regaining independence in 1945, the political reality turned out to be so different that Poland was dominated by the influences of Soviet ideology, which was so ruthless that, taking up threads of reference to the law and science of Western Europe without a critical attitude to them led to the harassment of the author, together with censorship decisions³. The comparative works that emerged during the Socialist period were most frequently limited to the law and science of the countries of the “people’s democracy”⁴. It was only the political transformation from the turn of 1989 and 1990 that opened up the possibilities of comparative law research, as well as the requirement for their results, just as at the beginning of the inter-War period, which were useful for intensive legislative work on new systemic solutions. This process is continuing into contemporary times, while the number of publications and representatives of modern comparative studies is impressive and simultaneously exceeding the possibilities of describing it in this publication. It can be said with certainty that, without many publications by such authors as Z. Niewiadomski⁵, authors of the collective work edited by J. Jeżewski⁶ and many others, work on the restitution of territorial self-government in Poland would not have progressed in such a short time and with such a result.

3. Modern Polish Comparative Studies: Tendencies, Future and Development

The works of contemporary Polish comparative studies pursue both of the objectives of comparative research which were developed a long time ago: cognitive, when

the authors only explain foreign law to us, without prejudging whether the reader will stop at purely learning about this law, or whether it will inspire him to conduct further research; and a constructive objective, when the research has the objective of proposing solutions for domestic law which are taken from foreign law, although doubtlessly the latter is widely considered as more demanding and more valued⁷. Initially, the work was represented by the legal/historical comparative study trend, where the subject was taken to be the genesis and evolution of foreign law solutions, sometimes compared with the solutions of Polish law which were applicable at the time, which mainly arises from the objective of catching up on the delays from the period of the Socialist state. Over time, works representing the current comparative trend of legal analysis started to appear increasingly frequently, when the subject matter of the comparison is the state of law in force in the countries selected for the comparison. In terms of territorial scope, works are more often encountered, which are based on bilateral comparative studies, when the author compares Poland and a different country of his choice in a comparative pair. However, examples of unilateral comparative studies are also encountered, when Poland is compared with several countries, although, in this case, F. Longchamps' objections should be borne in mind, when he argued that the choice of country for the comparative process has a decisive influence on its outcome, because a comparison of countries with very different legal systems cannot lead to a different result, but a conclusion about the dissimilarities of the legal institutions in these countries, which rules out the constructive objective. The subject matter of the work is sometimes a comparative study of legal thought, when ideological directions and trends are studied in the countries being compared, as well as doctrinal comparative studies when fundamental doctrinal treatises, monographs and scholarly articles that have influenced the shape of the doctrine, issues of legal education arising from a comparison of academic textbooks and finally important areas of scholarly debates and legal journalism are compared to each other. However, the comparative law study of legal institutions, their normative expression and the sources of law devoted to them are the most widespread.

The repeatedly mentioned F. Longchamps warned against many threats presented by a comparative law study initiated without proper knowledge and experience, but also without making preliminary findings. First of all, he dispelled the simplified vision of research as being targeted at seeking similarities between various legal orders, because, in his opinion, they cannot be identical because of cultural differences, so he tended to seek the slightest differences between them. He later drew attention to the correct definition of the subject matter of the research, so that the constitutive elements of the definitions are common to the institutions appearing in the countries studied, while the differences would apply to the remaining elements (he referred to them as non-defini-

tional features). As a result of the correct interpretation, their identification enabled a distinction to be made between the views of a foreign doctrine and elements of a foreign law that had to be subjected to critical analysis in order to establish the differences between and similarities with the doctrine and domestic law. According to F. Longchamps, they brought two important benefits. First, they allow for the assessment of one's own law and the improvement of its institutions. Second, they help improve research into one's own law, which affects the state of the national doctrine.

4. Traditions and State of Research of Contemporary Wrocław School of Comparative Method in Administration

Finally, attention should be drawn to the Wrocław school of administration. It should be emphasized that the comparatist trend is even its distinguishing feature, as each of its founding fathers (Tadeusz Bigo and Franciszek Longchamps), as well as their students (Adam Chełmoński, Jan Jendrośka and Tadeusz Kuta), former continuers (Jan Boć, Iwona Dyrda, Jan Jeżewski, Małgorzata Longchamps and Konrad Nowacki) and contemporary continuers (Marcin Miemieć, Jerzy Korczak, Piotr Lisowski and Jerzy Supernat), and finally the youngest continuers (Dominika Cendrowicz, Agnieszka Chrisidu-Budnik, Barbara Kowalczyk, Renata Kusiak-Winter and Łukasz Prus), used the comparative method in their research and used their results in numerous publications. Despite significant limitations in access to foreign-language legal literature and sources of law of Western countries, the employees of the Institute of Administrative Sciences made efforts to establish contacts with German, Austrian and French universities and, in the 1970s, professors Jan Jendrośka and Tadeusz Kuta, together with a group of professors from several Polish universities established cooperation with a group of German professors, as a result of which Polish-German colloquia devoted to administrative law are held every two years, one of them, the sixteenth, being held in Wrocław in September 2009, devoted to the subject of control of administrative actions.

A particular intensification of this research took place after 1990, when not only did the political and systemic conditions begin to favour it, but also the research opportunities opened up as a result of the study tours to European countries for shorter and longer scientific and research stays. This was also supported by the visits of Western European representatives of legal and administrative studies, for whom the trip behind the "Iron Curtain" ceased to be associated with risk. A special publishing series *Publiczne Prawo Porównawcze* [Public Comparative Law] was created in the Kolonia Limited publishing house, which was established by Jan Boć, in which 13 monographic and collective works were published, being devoted to, among others, Switzerland [Schaffhauser, 1993], Bel-

gium [Boć, 1993], France [Jeżewski, 2004], Germany [Miemieć, 2007], Italy and Spain [Kozłowska, 2012], as well as cross-border issues [Korczak, Nowacki, 2006; Korczak, Nowacki, 2008; Kusiak-Winter, 2011]. The activities of such employees of the Institute of Administrative Sciences as professors Jan Boć and Konrad Nowacki in 2009 led to the establishment of the German-Polish Centre for Public Law and Environmental Network (GP PLEN) as a joint research unit of the University of Wrocław and the Brandenburg University of Technology (BTU) Cottbus-Senftenberg. Ph.D. Renata Kusiak-Winter's commitment has meant that cooperation with Fachhochschule für öffentliche Verwaltung und Rechtspflege Meißen, has been established since 2015 which has resulted in the first truly comparative law conference "Aktuelle Forschungsschwerpunkte in den Verwaltungswissenschaften in Deutschland und in Polen" with a joint post-conference publication [Kusiak-Winter, 2017]. It is not by chance that a Public Administration Comparative Unit was established in 2016 at the Institute of Administrative Sciences under the supervision of Professor Jerzy Supernat, who particularly intensively conducts research and teaches in the area of broadly understood comparative law research.

Everyone at the Wrocław school of administration is under the influence of the words once spoken by Professor Franciszek Longchamps "Poland is a place of historical drafts, history has made us comparatists", to which we try to be faithful continuers.

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NOTES

¹ W. Szuszkiewicz's translation of the work by W.B. Odgers, *Local Government*, appeared in Warsaw in 1905, while J. Gościcki's translation of the work by M.A. Ashley Percy, *Local and Central Government: A Comparative Study of England, France, Prussia, and the United States*, appeared in Lviv in 1910.

² R. Tokarczuk notes that a situation appeared in the inter-War period in Poland, which was probably unknown in any other country, when domestic comparative law studies were being conducted because of a law coming from outside the country (Russian, Prussian, Austrian and Hungarian law), which was not even regulated by the Act on the Law that Applies to Private National Relations of 2 August 1926 (Journal of Laws No. 101, item 580) [Tokarczyk, 2008].

³ An excellent example is F. Longchamps' postdoctoral paper, *Zalożenia nauki administracji* of 1948, which, despite making reference to "Soviet science" because of being excessively strongly seated in Western science was considered incompatible "with the spirit of the state system" and the entire edition was destroyed, while the Professor himself was dismissed from the university, where he returned after the "October thaw" in 1956. The work was published as late as in 1991.

⁴ See, as an example, J. Jendrośka, *Postępowanie administracyjne w kodyfikacjach europejskich państw socjalistycznych*, Warsaw 1970; J. Starościak (ed.), *Instytucje prawa administracyjnego europejskiego państw socjalistycznych*, Ossolineum 1973. It was only in the eighties that the climate for research into Western law became open enough that, among others, two significant monographs appeared: J. Łętowski, J. Pruszyński (ed.), *Administracja Republiki Federalnej Niemiec*, Ossolineum 1983 and J. Łętowski (ed.), *Administracja Republiki Francuskiej*, Ossolineum 1984.

⁵ Z. Niewiadomski's post-doctoral paper, *Samorząd terytorialny w warunkach współczesnego państwa kapitalistycznego (na przykładzie; Francji, Republiki Federalnej Niemiec i Szwajcarii)*, Warsaw 1989 became the starting point for work on draft territorial self-government acts, which were modelled on German and French solutions.

⁶ J. Jeżewski (ed.), *Gmina w wybranych państwach Europy Zachodniej*, Wrocław 1995 and its later publication *Samorząd terytorialny i administracja w wybranych krajach. Gmina w państwach Europy Zachodniej*, Wrocław 1999.

⁷ The transfer of solutions from foreign law to national law has both a continental dimension, as in the Polish case after 1990, but also an intercontinental dimension, as the process described by Peter de Cruz of the acceptance of English law in the countries of Southeast Asia (Malaysia, Singapore and Hong Kong) [de Cruz, 1999].

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ADMINISTRATIVE STATE IN COMPARATIVE PERSPECTIVE

PAŃSTWO ADMINISTRACYJNE W PERSPEKTYWIE PORÓWNAWCZEJ

Summary

This article offers an analysis of administrative state from comparative perspective as applied in the recent scientific research and literature.

Keywords

administration, state, comparison

Streszczenie

Artykuł przedstawia analizę państwa administracyjnego z perspektywy porównawczej w świetle ostatnich badań i literatury.

Słowa kluczowe

administracja, państwo, porównanie

INTRODUCTION

Knowledge of foreign administrative systems and comparative reasoning has always been of critical importance [Bignami, 2012]. An argument of special weight is here as follows: “history of public administration is (...) history of reception of foreign administrative institutions and solutions” [Izdebski, 2006, p. 63]. One example of reception of French and Belgian regulations in Italy is recalled by R. Caranta: “the readiness to learn from our neighbours was one of the key features in the formative era of Italian administrative law. When the Parliament of new Italy debated the reform of judicial review which was to become law in 1865, constant reference was held to the experiences of other European countries, notably France and Belgium. French administrative law was generally well known in Italy during all the second half of the XIX century” [Caranta, 2011, p. 2]. Today, a comparative approach may help public officials and civil ser-

vants interacting in the European administrative space understand their colleagues and adjust their line of argument accordingly [Bauer, 2015; Young, 2018]. This calls for thorough scientific comparative research providing deep structural knowledge of administrative systems across Europe and the world¹.

1. Administrative State and Comparative Approach

The recent excellent example offering a comparative approach to administration can be found in a collective book: *The Max Planck Handbooks in European Public Law. The Administrative State*, vol. 1, ed. by A. von Bogdandy, P.M. Huber, S. Cassese, Oxford University Press, Oxford 2017. Explaining the aim of the book, editors (being authors as well) stress in the *Preface* that a new public law is unfolding, namely European public law (*ius publicum europaeum*) – “one that establishes, guides, and limits the exercise of public authority in the European legal space” [Bogdandy, 2017, p. IX]. And although this new phenomenon is evident, its essence unfortunately is not. Therefore, the book aims to clarify the phenomenon and to this end it: “portrays the evolution and the *Gestalt* of states and administrations in Europe (*nota bene* the administrative state in America is also included – J.S.) through the analysis of specific legal orders and their comparison” [von Bogdandy, 2017, p. IX]. The exquisite analysis and comparisons contained in the book, being of importance for practitioners and academics alike, is a decisive motive for devoting this text to reviewing its content and main findings. Earlier two words about the very title of the book. The term „administrative state” was coined by the great American political scientist D. Waldo in 1948 in his book: *The Administrative State. A Study of the Political Theory of American Public Administration*. It succinctly expresses an exclusive link that has been established between the state and administration. In words of S. Cassese: “Where there is a state, there is an administrative system, and *vice versa*” [Cassese, 2017, p. 58]. Recently, public administration, being for a long time an exclusively national phenomenon, starts to cross its state borderlines becoming European and even global phenomenon [Egeberg, 2017; Klassen, Cepiku, Lah, 2016; Craig, 2011; Koopmans, 2011].

The book *The Administrative State* from 2017 actually includes analyses of ten states, namely nine European states: Austria (by E. Wiederin), France (by J.-B. Auby and M. Morabito), Germany (by A. von Bogdandy and P.M. Huber), Greece (by M. Ioannidis and S-I.G. Koutnatzis), Hungary (by H. Kupper), Italy (by B.G. Mattarella), Spain (by E.G. de Enterria and I.B. Iniesta), Switzerland (by B. Schindler), the United Kingdom (by M. Loughlin), and the United States (by W.J. Novak)². Unfortunately, there is no chapter on Poland, although references to Polish state appear quite often across the book. Still, the

absence of separate Polish chapter is visible especially bearing in mind previous Polish contributions to *The Max Planck Handbooks* in the form of chapters written by Polish authors, recently by S. Biernat and D. Dąbek [Biernat, Dąbek, 2014]. The ten chapters pointed above being the main body of the book are actually not comparative ones but separate studies of evolution and *Gestalt* of the chosen administrative states. A comparative approach and analyses of these states are offered in the book earlier (three chapters³) and later (five chapters). From the perspective applied in this text two chapters are of special relevance and, therefore, of special interest, viz. *The Transformation of the Administrative State and Administrative Law* by J.-B. Auby [Auby, 2017] and *A Typology of Administrative Law in Europe* by M. Fromont [Fromont, 2017].

2. Developments of Public Administration and Administrative Law

Regarding the emergence and development of modern states and modern administration in Europe, J.-B. Auby (Auby, 2017) rightly stresses that modern public administration did not develop at the same speed and in the same way in European states: “The way it grew differed just like the formation of the states themselves” [Auby, 2017, p. 603]. The author sketches the spectrum going from British to French state history pointing here that the state in the United Kingdom was initially administered locally and remained so until modern times, while the French state developed on the basis of a political and administrative centralization. The other European states, can be situated at differed places on this spectrum⁴. Anyway, despite the differences in formation of public administration in different European states, all the states developed a modern-type public administration after the end of the eighteenth century and in the course of the nineteenth century, providing it with numerous personnel organized according to the principles of rationality being later listed and explained in Weberian model of bureaucracy [Rainey, pp. 270–271]. And as administrative law is an outcome of the state’s maturity it is not surprising that the idea an administrative law emerged together with the Weberian modern administration. With the flow of time it become universally accepted that public authorities and public action require the application of a certain number of rules of implementation, as well as a judicial mechanism for supervising public administration. *Nota bene*, today all European public administrations and administrative laws seem to have been undergoing similar transforming processes [Ongaro, van Thiel, 2018].

Analyzing the factors and the main lines of current developments in public administration and administrative law, J.-B. Auby identifies three evolutionary factors: globalization and Europeanization, a dissociation of society from the state, and a decentralization of power. Each of these factors in one way or another questions traditional forms

of administrative activity and transforms the relationship between public authorities and society (individuals, groups of people) [Auby 2017, p. 609].

One out of many examples of the impact of globalization and Europeanization on public administration and administrative law is internationalization of the sources of administrative law [Auby 2017, p. 610]. In all European administrative systems one can observe a massive intrusion of external norms and standards. The best examples thereof are international agreements concluded on issues relevant to public administration and administrative law and – in the field of Union law – secondary legislation [Wegner-Kowalska, 2017]. In case of the latter, the principle of direct effect of EU law (Schutze, 2017) and the doctrine of EU primacy [Arena, 2017] are of complementary importance. Regarding European administrative law, it integrated some strong points of national legal traditions into the new body of European law. Nevertheless: “the administrative law of the EU is not a juxtaposition of national systems: it is a separate system, still in an early phase of its development, but having its own particular role to play in the institutional framework of the Union” [Koopmans, 2011, p. 401]. One can also not to underestimate the influence of the European Union on the development of transnational administrative values [Goudappel, van den Brink, 2011].

The second factor identified by J.-B. Auby that contributes to the transformation of public administration and administrative law is a dissociation of society from the state or reducing the state’s impact on society [Auby, 2017, p. 612]. This reduction is twofold as includes reducing the state’s impact on the economy in favor of the market [Barak-Erez, 2010; Hunt, 1997; Auby, 2010 and – secondly – reducing the state’s impact to the benefit of citizens [Poole, 2008]. The first reduction of the state’s remit is featured mostly by privatization and deregulation or regression of public intervention. Privatization, with the United Kingdom playing a pioneering role, occurred in different forms, including not only outsourcing (contracting out) of some public functions and activities, but also total withdrawing certain activities from the domain of public intervention and transferring them to the private sector framed by new forms of regulation produced *inter alia* by decentralized agencies entrusted mainly with instrumental powers [Chiti, 2018]. The reduction of the state for the benefit of citizens is driven by a common movement to go beyond traditional requirements of representative democracy towards administrative democracy (administrative transparency, openness, participation, consultation, public debate, etc.) [Kmieciak, 2017; Szpor 2016]. This movement has been complemented and supported by the development of various legal arrangements, procedures and principles that confer new rights on citizens in their contacts with public administration [Kmieciak, 2014], sometimes in the form of special soft law [Craig, et al., 2017].

The third factor listed by J.-B. Auby's that contributes to the transformation of public administration and administrative is a decentralization of power [Auby, 2017, p. 614]. Reasons behind a movement towards decentralization (or against the centralization of power) are partly the same as the reasons relevant for reducing the state's impact on societies, but additionally embracing the idea that: "the more centralized the government is, the more easily it will find itself in conflict-of-interest situations" [Auby, 2017, p. 615]. Two types of decentralization can be identified across Europe: territorial decentralization and institutional one. Territorial decentralization and territorial pluralism have been thriving in many European states as the European legal environment is very favorable to this kind administrative evolution. It is encouraged both by the Council of Europe (especially through the European Charter of Local Self-Government) and the European Union (through regional funds and setting up the Committee of the Regions). It is also of importance that some states (e.g. the United Kingdom and Sweden) have a strong tradition of local self-government. One should also stress that territorial decentralization transcends the institutional morphology of administration enriching the basis of administrative law as the legislation on certain issues of administrative law depends now on local, regional or autonomous legislators [Dąbek, 2015]. Regarding institutional decentralization, the best example is the creation of decentralized agencies entrusted in some cases with true decision-making administrative powers [Chiti, 2018, p. 766].

3. Public Administration and Administrative Law in Liberal Democratic State

These days in free democratic states⁵ there is no public administration without public law, esp. administrative law around which public law has developed. Institutional diversity typical for Europe is especially true with regard to the administrative law of European states. The cause of the diversity in administrative law lies, first and foremost, in: "the territorial and intellectual fragmentation of the continent, which for a long time impeded the exchange of ideas" [Fromont, 2017, p. 579]. Fortunately: "there are not as many administrative laws as there are European states" [Fromont, 2017, p. 580]. This is so due to the fact that there are states (great powers, source states, exporting states, archetypes) that propagated their own systems of administrative law throughout Europe through the influence of their legal scholarship and/or through their economic, political and military significance. The most important examples of states with seminal legal orders are France, United Kingdom and Germany [Fromont, 2017]⁶. The observation that groups of states (importing ones) have grown around these source states and partly use the same legal institutions and principles takes M. Fromont to the following definition of the type of ad-

ministrative law: “an order of administrative law developed by a particular state that functions, at least in part, as a model for others” [Fromont, 2017, p. 580].

From the perspective of administrative state being responsible for a magnitude of administrative functions and tasks [Hofmann, Rowe and Türk, 2011, p. 57] and from the very concept of administrative law it is important to notice, how M. Fromont frames a relation between protection of the rights of citizens and the administrative organization and efficiency. M. Fromont is fully aware that administrative efficiency is important issue but nevertheless in free democratic states he gives the priority not to the instrumental function of administrative law but to the protective (safeguarding) one. Argumentation and a strong personal opinion deserve a quotation from him: “the protection of the rights and interests of the citizen is the *raison d'être* of a free democratic state. The administrative organization can certainly have an impact on the relationship between the public authority and the citizen, but it is not at the core of this relationship. In my opinion, the task of every jurist is to work comprehensively towards the realization of the protection of the citizen. Besides that, administrative efficiency is an important issue; however, this cannot lead to disregard of the central concern – the protection of freedom” [Fromont, 2017, p. 599]. One can agree with such a take as it doesn't disregard the fact that administrative law is a dual (double, dualistic) phenomenon and that good administration in terms of efficacy is also crucial for citizens [Supernat, 2016]. H.C.H. Hofmann, G.C. Rowe and A.H. Türk, discussing types of administrative tasks and administrative activity in the European Union, remark in passing that: “The administrative tasks should not (...) merely be seen as inexorably linked with a concrete measure, act, or specific step. Many tasks can be characterized as a form of management or organization, whether or not an identifiable measure or action emerges” [Hofmann, Rowe and Türk, p. 60]. Underestimating this remark would be a grave sin in administrative state.

Nota bene, a duality of administrative state and administrative law can be inferred from the dual nature of public administration: “Public administration is a political institution as it is *public*, and is, and should be, an effective institution as it is also *administrative*. The usage of the word ‘public’ in ‘public administration’ brings us many specific connotations, including: the rule of law, constitution, political power, democracy, input-oriented legitimacy, society-orientation, respect for human dignity and rights, accountability, transparency, participation, consensus, politics, policy, change, values, mission, steering, etc. On the other hand, the word ‘administration’ in the term ‘public administration’ typically produces rather different connotations, including: efficacy, effectiveness, efficiency, economy, output-oriented legitimacy, state-orientation, order, bureaucracy, bureaucratic power, management, planning, organization, motivation, coordination, control, division of work, hierarchy, centralization, unity of direction, policy implemen-

tation, predictability, stability, permanence, rowing etc.” [Supernat, 2016, p. 51] One may add here that also good governance is a dualistic concept: a technical and a strong political one, esp. as understood by the European Commission: “Five principles underpin good governance (...) in this White Paper: *openness, participation, accountability, effectiveness and coherence*. Each principle is important for establishing more democratic governance. They underpin democracy and the rule of law” [European Governance, 2001]. The concept of good governance in this document found a superb explanation in the insightful text of D. Curtin and I. Dekker [Curtin, Dekker, 2005].

CONCLUSION

Assuming that the configuration of legal relationships between public authority and citizens is the decisive distinguishing feature of administrative law, M. Fromont identified three types (models) of administrative law: the French type of administrative law, the British type of administrative law and the German type of administrative law, pointing out that after the fall of communism states in Central and Eastern Europe (Poland among them) have relied upon the German model of administrative law [Fromont, 2017, p. 595]. The typology of administrative law in Europe submitted by M. Fromont is of necessity a simplified one. *Nota bene*, as any other typology or model. The typology is nonetheless helpful in elucidating the similarities and differences between administrative systems in Europe, which is the core of comparative research. Therefore, it can further comparative study of administrative states, which is absolutely necessary to preserve the national states committed to their own political and cultural traditions, and to address the structural transformation of public law and authority in Europe.

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NOTES

¹ The review of the evolution of the state of the art of research in public administration and management in Europe since the Second World War was submitted by E. Ongaro, S. van Thiel, A. Massey, J. Pierre and H. Wollmann, *Public Administration and Public Management Research in Europe: Traditions and Trends*, [in:] *The Palgrave Handbook of Public Administration and Management in Europe*, Vol. 1, E. Ongaro, S. van Thiel (eds.), Palgrave Macmillan, London 2018, pp. 11–39.

² Regarding the chapter on administrative state in America it is worth to mention that the first book on administrative law published in the United States applied a comparative perspective: F.J. Goodnow, *Comparative Administrative Law: An Analysis of the Administrative Systems, National and Local, of the United States, England, France and Germany*, G.P. Putnam's Sons, New York 1897. Deep interest in American administrative law revealed a leading Italian scholar F. Cammeo, who published in 1895 the book: *Il diritto amministrativo degli Stati Uniti d'America*.

³ In one of these chapters, C. Schmitt's contribution to European public law in his highly influential monograph *The Nomos of the Earth in the International Law of Jus Publicum Europaeum*, published in 1950, has been recalled, see: A. von Bogdandy and S. Hinghofer-Szalkay, *European Public Law – Lessons from the Concept's Past*, [in:] A. von Bogdandy, P.M. Huber and S. Cassese (eds.), *The Max Planck Handbooks in European Public Law. The Administrative State*, vol. 1, Oxford University Press, Oxford 2017, pp. 45–56. C. Schmitt's philosophy of law and state was lately mentioned with certain distance and caution in Polish context by A. Zoll, see: *Werdykt wyborczy może odwrócić rzekę. Z prof. Andrzejem Zollem rozmawia Maciej Stasiński*, "Gazeta Wyborcza" 2018, No. 46 (9260), pp. 24–25.

⁴ In case of German administrative law, the leading author was Otto Mayer (1846-1924) whose thinking was profoundly inspired by the French legal system. In matters of administrative law the French legal system (esp. the case law of the French Conseil d'Etat) had also high influence on the evolution of the European Communities. Thus, the concepts of *légalité* and of general principles of law in European administrative law owe much to the French administrative law tradition.

⁵ As freedom can be understood in different ways in different contexts, it is worth to recall four essential human freedoms critical for free democratic states with their administrative systems and for judicial control over these systems (administrative and constitutional courts), as stated by F.D. Roosevelt in US Congress on the 6th of January 1941. These freedoms are as follows: freedom of speech and expression, freedom of religion, freedom from want and freedom from fear. The Roosevelt's address is *inter alia* available in *The Penguin Book of Twentieth-Century Speeches*, ed. by B. MacArthur, Penguin Books, London 1999, pp. 199–202. More on essential human freedoms from comparative perspective in constitutions of Australia, Brazil, Canada, China, Finland, Germany, India, Iran, Japan, South Africa, United Kingdom, United States, and Venezuela see: *An Inquiry into the Existence of Global Values. Through the Lens of Comparative Constitutional Law*, ed. by D. Davis, A. Richter and C Saunders, Bloomsbury, Oxford and Portland 2015. In the chapter devoted to the United States, R. Teitel wrote: "The overarching value articulated in the United States Bill of Rights of the 1789 Constitution is freedom. Even before the constitutional founding, the Declaration of Independence stated that 'Life, Liberty, and Pursuit of Happiness' were unalienable rights such that 'whenever any Form of Government becomes destructive to these ends, it is right of the People to alter or to abolish it (...) and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their Safety and Happiness'", R. Teitel, *Global Constitutional Values in the United States*, [in:] *An Inquiry into the Existence of Global Values...*, p. 394.

⁶ F. Longchamps in his insightful pioneering comparative work on administrative law science in western Europe came to the conclusion that chosen as foci six primary subject matters (scope and system of administrative law, sources of administrative law, legal structure of administration, legal situation of an individual against administration, legal control of administration, and values of administrative law and administrative law science) would be discussed in the following seven states: France, Belgium, Austria, Western Germany, Switzerland, Italy, and England, see: F. Longchamps, *Współczesne kierunki w nauce prawa administracyjnego na Zachodzie Europy*, Kolonia Limited, Wrocław 2001 (originally published in 1968).

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ON THE NEED FOR COMPARATIVE STUDY OF PUBLIC ADMINISTRATION AND ADMINISTRATIVE LAW

O POTRZEBIE BADAŃ PORÓWNAWCZYCH NAD ADMINISTRACJĄ PUBLICZNĄ I PRAWEM ADMINISTRACYJNYM

Summary

The aim of this paper is to present the objectives of comparative method in the study of public administration and administrative law.

Keywords

comparative method, comparative public administration, comparative administrative law, cultural factors

Streszczenie

Artykuł przedstawia cele metody porównawczej w administracji publicznej i w prawie administracyjnym.

Słowa kluczowe

metoda porównawcza, porównawcza administracja publiczna, porównawcze prawo administracyjne, czynniki kulturowe

“Without comparisons to make, the mind does not know how to proceed.”

A. De Tocqueville

INTRODUCTION

Public administration and administrative law are very closely connected with each other and indispensable in every state. Modern societies cannot function without public

administration and administrative law, and there are no substitutes for them. In the present era of europeanization and globalization, the importance of these two phenomena is even greater.

Public administration is an activity which is “overtaken by the state and realized by its pending bodies and also by the bodies of local self-government fulfilling collective and individual needs of citizens, resulting from the people’s coexistence in communities.” [Boć, 2010, p. 15] A. Lincoln once said that “The legitimate object of (...) [public administration – D.C.] [is] to do for a community of people, whatever they need to have done, but cannot do, at all, or cannot, so well do, for themselves – in their separate, and individual capacities.” [Lincoln, 2008, p. 221] Among the key features of public administration are the facts that it always acts as a profitless entity aiming at performing public tasks, and that it is characterized by its purposive actions and initiative [Duniewska, 2005]. In the present period of principal social changes and new demands, public administration must react to them quickly and should be oriented towards securing public interest and public needs. The remark made, however, does not apply only to national administrations. Today, public administration functions at various levels: national, European, international and global¹.

Administrative law, on the other hand, is understood as “the most extensive and flexible body of law controlling the legal situation of both individuals and almost all other subjects operating within the state.” [Duniewska, 2005, p. 93] Administrative law “exists at the interface between the state and society – between civil servants and state institutions, on the one hand, and citizens, business firms, organized groups, and non-citizens, on the other. (...) [Its - D.C.] essential role is to frame the way individuals and organizations test and challenge the legitimacy of the modern state outside of the electoral process. There are two broad tasks [of administrative law – D.C.] – protecting individuals against an overreaching state and providing external checks that enhance the democratic accountability and competence of the administration” [Rose-Ackerman, Lindseth, Emerson, 2017, p. 1]. The very important fact is that administrative law is linked with public administration in a way that the former regulates the latter’s structures, tasks and procedures.

1. General Remarks on Comparative Public Administration and Comparative Administrative Law

Today’s era of developed contacts between states and people from different countries and continents, as well as the particular intensification of the interdependence of development of particular parts of the world, leads to an increase in interest in comparative

research in the field of public administration and administrative law. It is noteworthy that the increased interest in applying comparative research on public administration and administrative law is not the result of “idle curiosity” of researchers. In public administration and in the field of administrative law, comparative research is justified by social necessities, without the existence of which they would soon die out [Starośćiak, 1973].

The beginnings of applying the comparative method in public administration and administrative law have a certain tradition. When it comes to comparative research in the field of public administration, they have a shorter tradition than comparative studies in the field of administrative law. Their development in the world is connected, among others, with the work of the Comparative Administration Group established in the United States in 1960. However, despite the incomparably shorter tradition, the importance of comparative public administration is today as important as comparative administrative law. In Western Europe and the United States, comparative public administration is considered part of the administration theory. According to the Comparative Administrative Group it is defined as “the theory of public administration applied to the diverse cultures and national settings and the body of factual data by which it can be examined and tested.” [Otenyo, Lind, 2006, pp. 1–7] And its main goal, as L. Cadwell claims, “is to hasten the emergence of knowledge concerning administrative behaviour – in brief, to contribute to a genuine and generic discipline of public administration.” [Cadwell, 1982, p. 230]

Comparative public administration is a cross-cultural approach to the study of public administration [Henry, 1985] which focuses on cultural diversities and Weberian bureaucracy. The comparative public administration also takes up issues of administration activities undertaken in various environments, and focuses on the creation and implementation of public policies in the areas of public authorities’ activities, on the structures of public administration, as well as on its organizational culture. It values empirical research that takes advantage of rigorous methods such as field observation and experiments as well as organizations, for instance, groups. What is more, it emphasizes the multi-organizational nature of public administration and the significant character of interaction between governmental organizations at different levels [Fatile, Adejuwon, 2010].

It needs to be noticed that comparison within the public administration can be made both from the point of view of administrative law and the science of administration. If it is made from the perspective of the science of administration, it covers a wider spectrum of problems than comparative research conducted under administrative law. The difference in the area of research on public administration depending on the adopted perspective, i.e. administrative law or the science of administration, results from the fact that “The subject of the administrative law is the world of norms and their interpretation,

and the science of administration deals with real administration, the world of social facts and related assessments.” [Kulesza, Sześciło, 2013, p. 15] Therefore, the sphere of comparative research conducted from the point of view of the science of administration refers primarily to the internal environment of administration, to the goals of its operation, to the search for the best solutions in its organization and functioning as well as the decision-making process. From the point of view of the administrative law this sphere is primarily relations of administration with the external environment manifested in the legal basis of its operation, social expectations towards the administration and its legal forms of action [Szreniawski, 2002].

Interestingly, comparative public administration often involves making comparisons between public and private administration. It is worth noting in this context that the perception of public administration as close to business and, subsequently, its comparison with private sector organizations began with the rise in the importance of the New Public Management concept in the 1980s², according to which public administration, like private one, should be oriented on achieving the highest possible results. To achieve this, the representatives of this concept considered it necessary for the public administration to use the mechanisms of market competition. In addition, it should be deregulated and many of its tasks should be privatized. The centralized, bureaucratic solutions characteristic for public administration in the field of staff recruitment and management, financial management, purchasing and resource allocation are inappropriate according to proponents of the New Public Management concept. Therefore, public administration should be designed on the pattern of the private model.

In comparative studies on public and private administration, attention is also drawn to the differences between them. The most frequently mentioned are the purpose of the activity, which in relation to public administration is free satisfaction of the collective needs of citizens resulting from the co-existence of people in communities and permanence of activity, and in the case of private administration, focus on profit and impermanence of activity. Both the existing differences and similarities between the two administrations mean that the research conducted on them in the comparative context leads to conclusions which vast majority is of practical value. Among the proponents of the trend of conducting comparisons concerning both administrations, there are also those who pay attention to the risks for citizens – recipients of public administration activities and warn against excessive admiration in the search for similarities, and thus shaping public administration in imitation of the private one [Błaś, 2013].

As for comparative administrative law, it is the study of other administrative law systems in order to understand one’s own system better. Comparative research in the field of administrative law has a long tradition on the European continent, dating back to the

nineteenth century, and comparative administrative law is a well-established scientific discipline. Comparing within the administrative law as a research method, depending on the historical period, served various purposes and performed various functions. Initially, it was thought that the examination of administrative law systems of other countries is aimed at better understanding of one's own system, as well as finding models to improve it. This approach to comparative research has been taking place on the European continent for over 150 years [Van Hoecke, 2015; Reimann, Zimmermann, 2006]. For example, a French lawyer, R. Saleilles (1855-1912), who was a professor of law at the University of Paris from 1895, a long-time lecturer in criminal comparative law, and an initiator of the creation of a comparative course in civil law at the Faculty of Law of the University of Paris in 1901, paid attention to a better understanding of one's own legal system as a function of the comparative method [Saleilles, 1911].

Over time, the functions of comparative law have evolved, and it has itself covered more and more new areas, while not appropriating the subject matter of comparative public administration, to become the tool for the proper harmonization of law within the European Union at the end of the twentieth century [Van Hoecke, 2015]. The current demands of comparative studies in the field of administrative law are more realistic, simpler and, one could say, more egoistic. These are the needs resulting from the intensification of international trade. Participation in this trade requires a good knowledge of the rights of the trading partners. For example – you cannot set up or run a business in another country, buy real estate in another country, or travel in accordance with the law using public roads without knowing the rules regulating related issues, which are simply a part of administrative law [Starościak, 1973].

2. The Necessity of Comparison within Public Administration and Administrative Law Systems

According to P.G. Peters “All scholars have a tendency to conceptualize politics, economics or other social phenomena [like public administration and administrative law – D.C.] in terms of our own national or even personal experiences. (...) However, it is crucial for the development of meaningful theoretical perspectives in those social sciences to examine each national experience in light of that of other nations. This allows us to understand the effects which differences in structures, cultures, and values have on each other, and on the performance of the particular aspect of the social system that is being investigated. In that regard, the tendency of academic disciplines to isolate comparative studies from other subfields represents a barrier to theoretical development and enrichment within those disciplines.” [Peters, 1990]

Both in the field of public administration and administrative law, comparative research has many advantages:

Firstly, because “Public administration has a massive impact on the life of today’s societies and individuals, it is also often the subject of interest and judgment in commonplace opinion, the press, etc. Administrative law, like no other legal branch today, enters into everyday life – and (...) is quite well known in society and generally obeyed by the average person without much resistance.” [Longchamps, 2001, pp. 3–4]

Secondly, because comparing is the basis of all knowledge [della Porta, 2002]. It enables a comprehensive and in-depth look and a more thorough assessment of public administration and administrative law of another country [Rybicki, 1973]. It allows one to understand the legal and social conditions in which other societies function [Glenn, 2006]. The motive of comparative research associated with the extension of one’s own worldview probably does not require much justification. There is no better way to overcome stereotypes and build bridges between societies from different countries as well as learn about them. The most common cause of conflicts, stereotypes and prejudices is the lack of knowledge about others.

Thirdly, the use of the comparative method can serve as an aid in improving the national public administration and administrative law. The nineteenth-century comparatists already saw this advantage of the comparative method.

Fourthly, comparison as a component of the comparative method is a particularly important cognitive activity in every research work [Pieter, 1967], mainly due to the internationalization of scientific life, development of international relations and the joining of states within international organizations. These phenomena inevitably necessitate comparing the legal systems of individual countries and drawing conclusions of high cognitive and practical significance from the point of view of their own legal solutions [Rybicki, 1973].

Fifthly, comparative studies provide material for the formulation of generalizing assertions, or at least historical generalizations [Longchamps, 1970]. However, this is possible only when the application of this method is guided by the vision of creating a general theory of solving a certain legal problem [Zweigert, 1972].

3. The Difficulties in the Study of Comparative Public Administration and Comparative Administrative Law

To consider a study as a comparative study, whether in the field of administration or law, it must contain the so-called “intellectual input” [de Cruz, 2007]. Comparative research in public administration and administrative law should be something more than

just comparing and confronting information on various administrations and legal systems. It should provide insight into the nature of the problems faced by various administrative law systems and the public administrations functioning in them, as well as the ways in which they operate and develop. For this reason, an important task for the person conducting comparative research is to make a satisfactory review of the state of the art and the legal system of the country which is to be the area of comparison. However, a problem arises before the researcher in this task: in each system there are first and second degree problems. Therefore, the task of the researcher is to determine which of them are important, i.e. those without which the study will be incomplete and not entirely cognitively valuable, and which are less important and can be omitted. Proper implementation of this task affects the success or failure in the application of the comparative method by a given person. In addition, in the comparison process, it is important to limit oneself to specific systems that form the basis of comparisons. If the research is to be in-depth, too many legal systems cannot be selected for comparison, because when comparing each with the other, it may turn out that there are so many compared options that there is not enough room to draw conclusions from research [Pozzo, 2012].

CONCLUSION

The presented considerations show that the comparative public administration and comparative administrative law contribute to the improvement of their own legal and organizational systems. In addition, they also have the advantage of allowing one to understand the mechanisms of functioning of other legal systems. Therefore, research conducted within the framework of the comparative public administration and comparative administrative law allows one, despite the hardships hidden in them, to broaden horizons of thought. This is the research typical of the era of peaceful coexistence of the world: it constitutes a platform for discussion and mutual knowledge, without the possibility of imposing one's view on others. It helps to create a universally understandable language of law [Starościak, 1973]. So it is of great value if we only avoid the pitfalls that could be found within its framework.

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NOTES

¹ The European Union administration is a great example of this phenomenon.

² A new managerial approach to public administration first appeared in Great Britain, Australia and New Zealand in the 1980s, and from the early nineties it first gained its place in the United States.

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PUBLIC ORGANIZATIONS *VERSUS* PRIVATE ORGANIZATIONS?

ORGANIZACJE PUBLICZNE *VERSUS* ORGANIZACJE PRYWATNE?

Summary

This paper critiques the comparative literature on these organizations to assess the usefulness of the public – private distinction.

Keywords

organization, public, private

Streszczenie

W artykule dokonano przeglądu literatury przedmiotu w celu stwierdzenia zasadności dokonywania dystynkcji organizacje publiczne – organizacje prywatne.

Słowa kluczowe

organizacja, publiczny, prywatny

INTRODUCTION

Comparative research into the logic of the operation of public organizations and private organizations (enterprises) is necessary – and can simultaneously be risky. The difficulties and threats primarily arise from the complexity of the legal, economic and technological conditions constituting the grounds for understanding the content, functions and values of the two types of organization in various countries. Furthermore, the category of public organizations itself is not uniform; in other words, it includes public organizations which fundamentally differ from each other in terms of the objectives of their operation, their functions in society and the sphere of their activities. The term “private organizations” also includes very different organizations, some, being privately owned and operating for profit, pursuing public objectives or positioning their activity within the area of pursuing the public interest. The distinction between public or-

ganizations and private organizations is therefore imprecise, as it notices a blurring of the boundaries between the public and private sectors [Musolf, Seidman, 1980; Bozeman, 1988; Gideon, 2015] and an ambiguity of the term “publicness” [Moulton, 2009]. Therefore, it is easy here to present simplified arguments leading to lesser or greater misunderstandings and excessively hastily drawn conclusions. At the same time, however, it is precisely the search for differences between public and private organizations that opens up new research perspectives, which arise from the dynamic development of public management as a scientific discipline [Kozuch, 2005; Sudoł, 2016] and the mutual permeation of models of operation of public and private organizations. The result of the development of the new research perspectives is an increasing number of comparative studies published in the literature on public administration and management [Lachman, 1985; Bao, 2009; Perry, Babitsky, 1986, van der Wal, et al., 2008; Rainey, et al., 1976]. The framework of this article precludes a discussion on all the differences between public and private organizations identified in the literature on the subject. Furthermore, the identified differences are a consequence of the division or classification of the organization, including the division into public organizations and private organizations. To a certain extent, such a division is a sign of the use of a subjective convention, while also involving axiological convictions and legal regulations on the operation of public finance sector units in a given country. Therefore, I am limiting myself in the article to an indication of just four criteria for dividing organizations into public or private organizations.

1. Interest Criterion

While using the above criterion to divide organizations into private organizations and public organizations, it is emphasized that the distinctive element of public organizations is operation in the public interest [Hall, Quinn, 1983; Mitnick, 1980; Perry, Rainey, 1988, Riccucci, 2012]. Operating in the public interest means that public organizations serve – or should serve – the common good of specific communities. Public interest constitutes values, benefits and goods that are important to specific groups of people. The publicness of these values, benefits and goods is based on the fact that this is about the interest of as large a number of entities as possible (possibly the largest), while minimizing losses for as small a number (the smallest) of people as possible. Therefore, public interest is a good and benefit of entities, in particular, satisfying their needs, in that after all, the condition that such a good satisfying specific needs applies – even unequally – to the largest possible number of people who, in the given situation, may be interested, while causing losses to a relatively small number of people [Ander-

son, 2012; Szydło, 2014]. At the same time, private organizations can be mentioned (such as Facebook and Twitter), whose scale of operations and force of influence on satisfying the specific needs of individuals is so large that the question is justified of whether they are operating in the public interest. Answering such a question is problematic for two reasons. The first is related to the category of public interest itself, which is difficult to define and quantify [Perry, Rainey, 1998]. The second is related to the classic paradigm, according to which the only “sources” of satisfying the public interest are public organizations. One of the characteristic features of modern civilization transformations is the development of the information society, which is also referred to as the global community. Important changes taking place in public space are being observed in the reality of the operation of the information society, one being the emergence of new, substitute “sources” of satisfying the public interest.

2. Criterion of the Mechanism of Allocation

The use of this criterion in making a division of organizations into public or private organizations initially enabled the identification of the dichotomy of polyarchies and the market [Dahl, Lindblom, 1953]. In a polyarchy, the dominant mechanism of allocation of goods is the hierarchical structure that determines the nature of the exchange of these goods and services. It is precisely the presence of the hierarchical mechanism of the allocation of goods that means that public organizations have stable incomes, which are not subject to such significant fluctuations as the revenue of companies in economic cycles. The market is dominated by the mechanism of the interaction of the components of the market, primarily demand, supply and prices. In conditions of perfect competition, neither the buyer nor the seller has a direct influence on the price. It is precisely the presence of the market mechanism of the allocation of goods that means that private organizations look for their sources of competitive advantage, among others in the quality and/or the price of the product, flexibility in operation and innovation. However, it relatively quickly turned out that such a dichotomous division is sub-optimal. This is because it was noticed that public organizations are not always guided by public interest, particularly in the area of regulation, in which private organizations gain the ability to influence the regulatory solutions in order to maximize their own functions of the objective through processes of pressure and lobbying¹. The dichotomous division was replaced with a continuum, one end of which constituted a polyarchy, while the other was the market [Perry, Rainey, 1988]. Between them, there are various hybrid solutions containing the two mechanisms of allocating goods and services². The existence of heterarchical structures is currently being noticed in the literature. A heterarchy is a process that appears in both

the private and the public sectors expressing the joint appearance and the mutual permeation of vertical structures (the form of a pyramid) and horizontal structures (the form of a matrix). This term reflects mechanisms of public decision-making, taking into account the interdependence of private and public organizations that are involved in a wide variety of network systems, the need for higher level coordination (metagovernance) requiring not a monocentric centre of authority and a vertical (hierarchical) structure, but precisely a heterarchy [Izdebski, 2015]. A heterarchy challenges the traditional division into the autonomous orders of reality of public organizations (the state) and private organizations (the market) [Chrisidu-Budnik, 2018].

3. The Criterion of Performance of Public Services

The use of this criterion for allocating an organization into public or private organizations justifies the assertion that public organizations are responsible for the provision of public services and the supply of public goods, while the activities of the private organizations constitute the provision of private services and the supply of private goods to customers. These assertions were based on observations of the history of the operation of public organizations, primarily territorial self-government, which was forced to become involved in new areas of activity, taking on the form of public services as a result of the industrial revolution and its related urbanization. The development of the archetype of modern public services at the end of the nineteenth century doubtlessly contributed to the resolution of urban problems and the improvement of broadly-understood conditions of existence. However, the provision of these services started to be contracted relatively quickly and with various effects to private and non-governmental organizations [Feildheim, 2007; Huque, 2005; Schmitz, 2015]. The process of the demonopolization of public organizations is currently being observed, with the transfer of some tasks to private or non-governmental organizations with which contracts are signed for the performance of specific tasks. This increases the area of public services in which public organizations are required to cooperate with private organizations. The consequences of the process of contracting for public services are important. In the theoretical plane, it is not possible to speak for long about the existence of public organizations that autonomously perform public services. Services are provided with the cooperation of independent entities; public organizations and private organizations.

4. Criterion of the Degree of Formalization

While using this criterion for allocating organizations into public or private organizations, it is claimed that the former are formalized to a greater degree (quantity, level of detail, stringency of legal regulations), the result of which is bureaucratism and low flexibility in operation, which is typical of them [Bozeman, 1995; Baldwin, 1990]. However, private organizations have a relatively low level of formalization and a high degree of flexibility in operation, which is related to a greater ability to adapt to changes taking place in the environment of public organizations and in themselves. However, the use of this criterion does not enable a precise division to be made and hence a diagnosis that does not give rise to reservations regarding the differences in the functioning of public and private organizations. This is because private organizations – purely business organizations – can be mentioned, which are formalized to just as high a degree as public organizations, which do not operate in a market environment. The degree of formalization is not determined by public *versus* private provenance, but by belonging to a particular sector, which, depending on the specific country, may be dominated by the state or the market. Sectors and their enterprises are becoming increasingly global, so, in most countries, the level of regulation in individual sectors is quite similar. There are also more highly regulated sectors (formalized to a high degree), if only the banking sector, the aviation industry, which arises from the security of the whole economy and consumer protection, or the energy sector, because of their monopolies and their strategic nature for the economy. There are also less regulated sectors (formalized to a lesser degree), such as retailing or the automotive sector³. At the same time, the intensive development of technologies, including so-called disruptive technologies, generates the emergence of new services (such as Facebook and Uber), the mass nature and force of impact of which – usually negative – on various spheres of public life incites postulates to increase the degree of their formalization, i.e. regulatory intervention of not only the state, but also of transnational institutions.

CONCLUSION

In the comparative studies of the logic of operation of public and private organizations, a problem arises of the initial conditions, namely the system of concepts and definitions used by the researching entity. The starting point in the comparative study is the definition of the subject matter of the study i.e. the specification of what public organizations and private organizations are. The review of the literature on the subject shows that there is no precise definition of the subject matter of the studies, the result of which

is a defect in the ability to present definitive conclusions from the research conducted. The subjective choice of just four criteria for making a division into public or private organizations, which was intentionally used in the article, has proved unreliable. The lack of specification of how the researcher defines public and private organizations results in the inability to isolate the fundamental differences between them. At the same time, it is not possible to formulate a precise definition of public and private organizations in the context of the fact that the differences between the public and private sectors are becoming blurred as a result of civilizational and technological changes, as well as the resulting cultural changes. Such a state of affairs does not undermine the need to conduct comparative studies, the effectiveness of which depends on the specification of the subject matter of the study involving the appropriate choice of the subject matter of the study, i.e. the comparison of the operation of organizations providing identical services satisfying the same needs (e.g. universities, hospitals and landfills), which are present in two sectors: the public and private sectors.

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NOTES

¹ The theory referred to as the interest group theories of regulation [Noll, 1989], which try to fill the gap created by the theories of public interest, without specifying any mechanism of “transformation” by processes of pressure of private interests in policy decisions, has been isolated. The claim about the existence of two separate, unrelated mechanisms of allocation of goods was not a credible theoretical and empirical explanation. It was noticed that the source of competitive advantage of certain enterprises is the achievement of a privilege in access to political instruments and therefore the restriction of the action of market mechanisms enabling the elimination of competition and the achievement of a competitive position on the market. Therefore, the concept of capture theories is often used in the literature to emphasize the fact that the regulator – the public organization that, by assumption, is to act in the public interest – is subordinated to private interest groups [Posner, 1974].

² An example is territorial self-government in Poland, which has a dual nature. On the one hand, it is an administrative authority operating in the area of administrative law. On the other, it has economic tasks

assigned to the scope of its activities, which means that it operates within the sphere of civil law. The implementation of economic tasks means that the territorial self-government ceases to be just an office issuing authoritative decisions, authorizations and resolutions, as well as collecting charges and taxes [Gonet, 2011].

³ Setting the degree of formalization is an important function of management with important implications because it is perceived to be a cost by many private parties. An example is the pharmaceutical sector in which a low degree of formalization – such as in the USA – means that prices of medications are significantly higher. On the other hand, the profitability of the companies is higher, because the prices of medications allow for an in-depth development analysis and higher spending on research and development, which, in turn, results in the emergence of new medications, as well as a technological and market advantage. The degree of formalization in the specific sector which is a manifestation of the regulatory function of the state is based on a system of axiological beliefs that dominate in the particular country or transnational institutions.

Part I.

Comparative Public Administration

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POLITICISATION OF PUBLIC ADMINISTRATION IN FRANCE

POLITYZACJA ADMINISTRACJI PUBLICZNEJ WE FRANCJI

Summary

This paper proposes a model of analysis of the forms of politicisation in the public administration on French case. The purpose of this paper is to present politicisation as a dynamic process of changes in public administration.

Keywords

France, politicisation, public administration

Streszczenie

W artykule przedstawiono model analizy różnych form polityzacji francuskiej administracji publicznej. Celem artykułu jest ukazanie polityzacji jako dynamicznego procesu zmian w administracji publicznej.

Słowa kluczowe

Francja, polityzacja, administracji publiczna

INTRODUCTION

The French political regime is currently the Vth Republic, which also happens to be the second longest political regime of the country since the French Revolution. The longevity of the system has allowed the French institutions to become stable, although this does not mean that the system is frozen in time and that nothing has changed since 1958 and the establishment of this Republic. One of the features that has largely evolved is the relation between politics and public administration, leading to a relative politicisation of the latter. Throughout this paper, what is meant by the use of the word politicisation is the influence by the ruling power on the appointment and careers of senior civil servants. In this context, the term ruling political power refers to the political party represented by a front candidate that has won the latest presidential elections and has thus constituted a government with the President as its most powerful figure. Interestingly

enough, an “official” source¹ can be found. There, one is able to find a page solely dedicated to administration and politics. The article itself is not very controversial, and states that things have changed throughout history, and that if today’s situation is more complex, it is also much better than it used to be. This short text addresses the questions that citizens might have regarding politicisation, and testifies that the state recognises the existence of such an issue. This is an interesting point, for over the years, the French administration has been seen as an institution at the service of citizens. It was seen as loyal to the political power in place, but still acting with little political involvement. In a nutshell the administration was quite neutral and equalitarian in regards to its work for the citizens. Moreover, civil servants evolved, professionally speaking, far from political engagements. This did not mean that civil servants had no political opinions or engagements, but they had to keep them private and not let them show in the work place, so that those political preferences would not favour them in any way in the advancement of their career. This perception of French administration is certainly to be considered idealistic. Throughout the years, there have always been administrative nominations resulting from political interventions. Nowadays, it is recognised and almost expected that the government will favour its close friends through nominations and transfers. The administration is not being hidden any more, and is often depicted by journalists in the media. Some municipalities are transformed by the presence of trustworthy deputies from the ruling political power. Public administration has become a political stake as well as an instrument, far from its former role of neutrality. Overall, politicisation has been perceived as a negative process, but the slow merging of politics and administration is now considered a normal. As a result, few politicians and senior civil servants seem to care about its potential negative consequences, as long as they both benefit from it. The first part will quickly establish the background of the French administrative system while also highlighting the reasons why the government feels the need to politicise the administration. The second part will focus on the end of the administration tradition that ensured the political neutrality of senior civil servants.

1. The Government and Politicisation

The French system, as described by Luc Rouban, had four main characteristics before it became widely politicised. The first is the great role played by senior civil servants in the enactment of reforms of the society. The second characteristic is the self-management of the administrative elite thanks to social resources. The third is the organisation of the administration around a strong hierarchy that leads to non-monetary advantages such as provided accommodations or chauffeur-driven cars. Claims by the senior public

service that the public administration is protecting the general interest of society, as opposed to the political elite that is ill-intentioned [Rouban, 2009], are the fourth and final characteristic. For Rouban, the administrative elite has, historically, always been in competition with politicians. However, the French administrative system as it stands today originated in the aftermath of the French Revolution. The latter imposed a rather “authoritarian and centralist sort of public management” [Le Bussy, 2001, p. 70], which in practice means that the administration is rather a supplementary of the government. By definition, it means that the administration has to “obey” the government, and thus the political power, by implementing their policies. This basic premise does not imply that the administration should be politicised in order for things to work well. If in the past the administration had been going back and forth, alternatively competing with the political power and submitting to it, in the 1960s things took a turn. The establishment of the Vth Republic had for premise the alliance of the administration with the political power that was at that time embodied by Charles de Gaulle² [1890–1970]. Moreover, the new republic was designed in accordance with De Gaulle’s vision, that of a strong presidential figure granted a vast array of powers, thus further increasing the centrality of the French system. Article 13 of the French Constitution highlights this vision by establishing a list of senior civil servants that the President is to appoint during the Council of Ministers, such as highest-ranking Military Officers or Rectors of Academies. In addition, the Institutional Act No. 58–1136 on appointments to civil and military positions of the state enlarges the appointment powers of the President. Moreover these appointment powers are detailed in the decree by the Council of Ministers No. 59–587 on the appointments to management positions of certain public institutions (e.g. Banque de France, ENA etc.), public companies (Aéroport de Paris) or national companies (SNCF – railway company). It should however be taken into account that some of the nominations are to be approved by the permanent parliamentary committees of both assemblies as expressed in the legislative act No. 2010–838 on the application of the 5th paragraph of article 13 of the French Constitution. The initiative of an alliance did not come solely from the political side; civil servants wanted to establish stable institutions, and they entrusted De Gaulle – although not always sharing his political view – because of the respect and admiration they had for this charismatic and devoted historical figure. This started blurring the lines for what was the politicisation of administration. Today, when observing French administration, this process of politicisation appears to be inevitable. If administration is from the outset a political issue [Mabille, 2001], then in the context of the French system, it is also a tool of the ruling power to which the citizens gave their trust during the elections. Taking this into account, can the politicisation of the public administration be seen as a negative consequence of politics?

When dealing with politicisation, it is important to understand that it touches every part of the French public administration, and has its roots mostly in the education available to one. Most of the French educational system is public and therefore managed by the government via two main ministries: *Ministère de l'Éducation Nationale* and *Ministère de l'Enseignement Supérieur*³. Since the French state is largely organised on the basis of a strong hierarchy, it seems logical that its educational model be designed the same way. French politicians are often proud to claim that France gives a chance to everyone regardless to their familial, social, etc. background. In practice, many counterexamples can be found, for huge discrepancies can often be found between what opportunities for higher education and employment are given to two different individuals. As a matter of fact, the French system gives great importance to the *Grandes Ecoles*, considered to be the best way to succeed in one's career. If studying at university is good, getting in such an institution is regarded as better. Indeed, although reforms are under way, about any graduate student can get in a Bachelor's degree programme (except for some exceptions), regardless of their grades; whereas in such *Grandes Ecoles*, the student has to pass a thorough entrance examination, and therefore has no guarantee of being accepted. This educational system led to the creation of a school dedicated to administration: *l'École Nationale d'Administration* more commonly known as ENA, which might be regarded as the most prestigious school in France. I would argue that this school embodies the French approach towards elitism and to a certain extent to the thin border between an administrative career and a political one. The ENA follows a very strict selection process to prepare its student to the highest positions of French Administration (senior civil servants). While studying at the school, the students are offered prestigious internship within any branch of the French administration (embassies, regional councils...). At the end of their course of study, students are ranked from least to most talented. Prior to the release of this index, they are asked to make a list of the positions they wish to obtain, and the best students are most likely to get what they asked for. Sometimes it is not necessarily what the student would like the most or would be the most interested in, but the most prestigious (*cour des comptes*) or where s/he already has made acquaintances. However, this school is not dedicated exclusively to an administrative/scholarly education, it also offers its members opportunities for strong political development. As soon as they are admitted, the students are urged by their environment to "choose" a political side. It is obvious that most students already have political opinions before starting their education at the ENA, but they are to take a clearer stance, or even become a member of a given party. This clear distinction will then guide the choices they will make and perhaps even the positions they will apply for [Ardant, 1987]. Even if they do in practice receive a political education, it does not contain any ideology

that would favour a specific political party, everything is still closely related to politics. For example when being an intern with a given President of region, who by definition has a political label, there is necessarily a strong political influence. Knowing that and the prestige afforded the ENA, it is no surprise that a large number of politicians who have had political responsibilities under the Vth Republic have completed their education there. As a result, out of the eight Presidents that this Republic has known so far, four came out of this school. It is only half of them, however we have to consider the fact that the school was created in 1946. Thus, neither Charles De Gaulle nor Georges Pompidou⁴ (1911–1974) had the opportunity to attend it. This brings the percentage of Presidents who have been former ENA student to 2/3 of the Presidents who could have actually made the choice to apply to this school. It is needless to mention here all of the ministers, members of Parliament, etc. who are also former students of the ENA.

As laid down in the introduction the French administration used to have an image of neutrality, however it can be said that it has always been seen as really slow, inefficient and bureaucratic. Politicisation can then be used as a way to make the public administration more efficient in its work. Neutrality and expertise are the key principles of administration in order for it to perform its administrative duties even during times of political changes, as well as to pursue its first goal, that of acting for the citizens and not for political parties. Politicisation on the other hand, enhances the cooperation between the administration and the political power [Le Bussy, 2001] for the former develops a feeling of belonging to the latter. This means that civil servants become loyal to the government in place not only because it is their duty in regards to their work, but also because they are politically engaged and share the same ideas regarding the implementation of reforms. Therefore, the main motive for the politicisation of public administration is that of the increase of efficiency. Not just any efficiency, but the efficient implementation of the government's policies. The democratic model implies that public administration is the institution in charge of implementing the manifesto of elected people, because what is laid down there is supposed to transpose the will of the popular majority. Reactivity and efficiency in the implementation of these policies is therefore a duty that the administration has towards the citizens. If the administration does not fulfil this within the acceptable limits, then the government would seem to have the legitimacy to take actions, translating in a relative polarisation of the administration via appointment of chosen people. The effects will be that the ruling power will know for sure that it can count on its civil servants to implement reforms and so needs to trust the senior civil service with the communication of such changes. Once the process of politicisation is under way, the ruling power is able to place its resources at key positions. In other words, it is able to make full use of its partisan forces that will remain loyal. The whole

process of politicisation also resembles that of centralisation. That is not to say that the government will act as an authoritarian one, for it is democratic, but it will nonetheless implement a strong hierarchy, forcing the administration to follow its policies.

We also have to take into account the phenomenon of counter-politicisation. It occurs after a switch in power during elections, when a different political party becomes the ruling one. In that moment, the administration has as its senior civil servants people who have been appointed by the last government, by another majority. The first reflex of the new government might then be to erase the whole senior public service, to replace it with new members that are also politicised, but loyal to them. It seems that the politicisation of senior positions helps ensuring the good functioning of the public administration. The established power is able to rely on people that will follow its directives with zeal/enthusiasm [Ardant, 1987], so that the whole bureaucracy will be faster, more effective. Moreover, if the administration has already been politicised by the previous government, then tensions can rise between the two institutions. The ruling power can for instance imply that civil servants are the reason why decisions are not implemented fast enough, or in the right way. This would discredit the administration, which, in addition, does not have the same tools as the government to defend itself (e.g. media representation). The resistance that some officials could express towards the new governmental policies would frustrate the ruling power, whose only answer to counter it would be to make use of politicisation to replace those people by other, carefully chosen ones. Utilising politicisation is really convenient for the government, for enables it to control actions taken by the administration without a form of resistance, and the administration turns out to be more reactive. In that sense polarisation can benefit the population, on the condition that the government knows when to stop and does not overstep its job to strictly implement its manifesto.

2. Civil Servants and Politicisation

The French administrative system is mainly based on the principle of meritocracy. In other words, civil servants are selected through a process of entrance competitive examination⁵ as laid down in act on statutory dispositions of the state's public service No. 84-16/Chapter III. However, the politicisation of the public administration changes the rules of the game. Although administrative departments are used to the numerous changes of leaders and can adapt to the different methods of work or ideas of these people with different personalities, the situation is different when regarding the process of politicisation. Indeed, when appointing officials on the basis of a political affiliation and not on their merit, the situation changes greatly. A person who would have followed

the “normal” path, and therefore would have earned his promotion, will be replaced at the last minute by someone else. The issue often comes up when political appointments are based on loyalty rather than competences [Ardant, 1987, p. 52]. That does not mean that every time someone is appointed on the basis of political loyalty, s/he is not competent for the job, but it is a feature to take into account when underlining the problems engendered by politicisation. Moreover, appointing someone to a position that would normally require ten years or more of seniority implies that those years of work are not really necessary and that the skills acquired during that period of time are also superfluous. Nowadays it often happens that young officials (in their 30s) are to be appointed to the rank of head of department after only few years of service upon leaving the ENA, whereas officials can, in average, hope to be appointed director at the age of 48 and after twenty-one years of service [Ardant, 1987, p. 52]. The politicisation brings inequalities to the core of the administrative system, when the latter is supposed to have as its main goals to treat every citizen the exact same way. It is not to be forgotten that if a career can start quickly thanks to a political input, the process works in the other way too, meaning that a civil servant’s career can be ended very quickly for the same political reasons. If those practises are to be recurrent, then it will have an impact on the public administration. Civil servants that had been working for a long time for the state will then be more likely to decide to switch to the private sector. The latter has clearer rules: efficiency and quality of work. The turn that the public administration has taken to appoint people regardless of their actual skills is in complete contradiction with the principles of the New Public Management⁶ that have been applied to the French administration over the past decades.

Since politicisation is not a one-way phenomena imposed to officials [Rouban, 2009], some civil servants will then develop a new conception of public administration, understanding that their only option in order to move forward in their career is to take advantage of this process [Ardant, 1987]. As Luc Rouban stresses it, “is politicised only the one who wishes to” [Rouban, 2009, p. 62]. However, this decision might mean a less linear career that will be less secure for dependent on politicians and on which party manages to win the elections over the years. In such cases, there are two different options: either choosing one specific political party that embodies one’s personal opinion, or to always be on the side of the current majority, resulting in changing allegiance when the political majority changes in order to get the most out of it.

While civil servants feel like they are to take a public political position, they might also feel the need to start a political career in addition to their administrative one. Indeed, taking a political position does not require to campaign for a political mandate/position. It is important to mention that France has a relatively loose policy regarding such pos-

sibilities between politics and administration. As a result, one is allowed to carry out a political campaign while retaining their position within the administration. If s/he is elected s/he is allowed to get back to their previous administrative position when the mandate come to its end, which might not be the case in other countries. A senior civil servant makes a good Member of Parliament thanks to their experience in different positions, including some time as minister's personal staff. Essentially, there are more than a few advantages to starting a political career following an administrative, one of which being that in case of troubles, one can always go back to the one's former position, without having to face further consequences. Moreover, the civil servants already have connections within both administrative and political areas, and therefore can broaden their horizon when looking at after Member of Parliament perspectives. This sometimes leads them to work in areas of administration they would not otherwise have been open to them without such a political background. As mentioned above, members Ministers' personal staff are key players in the process of politicisation of the French public administration. Indeed, when part of such institutions, there is no other choice for one than to be politicised, for it is an argument for loyalty towards the minister one is working for.

With time, the civil servants who have followed the normal path have themselves become politicised. This resulted in the creation of a sort of breeding ground mixing "traditional" civil servants and ones appointed by previous governments, from which new governments can choose from when acceding power [Rouban, 2009]. Moreover, when a government or politicians are elected, they might lack relevant knowledge due to their lack of experience of politics at such a high level, hence the usefulness of this breeding ground. With this resource of experienced civil servants that are already supporters of a given political side, the possibility of resistance that the concept of neutrality afforded the public administration becomes almost non-existent. As a matter of fact, politicisation has created a new category of workers who, despite their education in the administrative field, will most likely spend their whole career at politicised positions.

CONCLUSION

Since the French state has always been very interventionist, we can support the argument that the process of politicisation is inevitable and merely a consequence of the French political culture. Under the Vth Republic, this process has increased over the years along with the constant changes of political majority both at the head of the government and within the Parliament. Moreover, the amendment made to the French Constitution in 2000 on the harmonisation of the presidential mandate with the parliamentary one⁷, led to the near impossibility of a cohabitation government⁸ therefore increasing

the process of politicisation. The governments of today clearly know how to make good use of politicisation. In the same way, civil servants too have learnt to use politicisation to benefit their personal careers. However, the ever-increasing politicisation of the public administration becomes a cause of concern when it impacts directly the way in which the civil servants are performing their duties, and therefore when it starts impacting citizens' when engaging in administrative procedures. As a result, citizens have become used to politicisation as a fact more than an idea, although it is mainly present within the senior civil service. No clear border or distinction can be found between the higher levels of administration and the political area any more. In a senior civil servant's career, there will most probably be administrative positions including numerous political highlights such as a parliamentary mandate. Politicisation, even if it seems inevitable in today's society and political games, should however not lead to the total disappearance of citizens' trust in the administration. They need to feel that the principle of neutrality is still very much implemented, and that every similar demands are met in the same way, without any interference from political allegiance.

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NOTES

¹ Made available by the French government.

² First President of the Vth Republic from 1959 until 1969, Union for the Defence of the Republic (right).

³ Ministry for National Education and Ministry for Higher Education.

⁴ Second President of the Vth Republic from 1969 until 1974, Union for the Defence of the Republic (right).

⁵ Often in several step the first one being a written exam with for instance a case study and the second (after a selection) being an oral exam with questions regarding your career (why taking those decisions and what are your goals).

⁶ Application of techniques from the private sector to the public administration for more efficiency and profitability.

⁷ 2nd October 2000 referendum deciding on the length of the Presidential mandate (from 7 to 5 years).

⁸ Following the legislative elections, the majority party is different from the one of the presidential elections, resulting in the President and the Prime Minister to be from different political parties.

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PROBLEMS OF TURKISH PUBLIC ADMINISTRATIVE STRUCTURE

STRUKTURALNE PROBLEMY ADMINISTRACJI PUBLICZNEJ W TURCJI

Summary

Public administration in Turkey has recently experienced a reformation period, in order to solve the inefficiency problem of its local governments caused by cultural and traditional understanding of unitary state, which is inherited to Turkish Republic from Ottoman Empire. The paper focuses on the problems of public administration of Turkey that directly caused reforms.

Keywords

public administration, administrative reforms, Turkish administrative structure

Streszczenie

Administracja publiczna w Turcji stała się niedawno przedmiotem reform, które miały na celu rozwiązanie problemu braku skuteczności władz lokalnych. Źródłem niskiej skuteczności upatruje się w uwarunkowaniach kulturowych i tradycji państwa unitarnego będących spuścizną z czasów Imperium Osmańskiego. W artykule skoncentrowano się na problemach administracji publicznej w Turcji, które stały się bezpośrednią przyczyną wdrażania reform.

Słowa kluczowe

administracja publiczna, reformy administracyjne, struktura tureckiej administracji publicznej

INTRODUCTION

Turkey has been linked to the EU by an Association Agreement since 1964 and a customs union was established in 1995. The European Council granted status of candidate country to Turkey in December 1999 and accession negotiations were opened on 3 October 2005 [Soós, 2016, p. 245]. Although there has been a setback in relations between Turkey and the European Union in recent years, Turkey is still a candidate country and a strategic partner for the European Union. During the accession negotiations, in order to meet the Copenhagen criteria, the document that defines whether a country is eligible to join the European Union, Turkey undergone for a reformation process in its

public administration. The aim of these reforms was to overcome the problems in the public administration structure, so that it would be more efficient, effective and more up to modern understanding of administration which focuses on people's needs rather than state-centric understanding [Sözen, 2005].

Centrist administrative structure of Turkey caused lots of problems and required lot of planning relating to areas of activity of local governments and balancing the power relations between local governments and central administration. In this context, it was difficult for central administration to find effective solutions to local problems due to Turkey's large topography. For this reason, it was essential for Turkey to reformize the shape of its public administration and give more power to local administrations in order for effective democracy and good governance [Turan, 2016].

This paper aims to give a better understanding of Turkish public administration by explaining the structure of Turkish public administration and the reforms that shaped that structure. Also by underlying the reasons behind these reforms, the paper tries to analyze the main problems of Turkish public administration. It would also help people to understand the ongoing situation in Turkey much clearly, since the problems that affect public administration has also influence in Turkish political sphere. It is important to have a clear understanding of political and administrative structure of Turkey, because with proper and correct approach, Turkey can still play a major role in European Union as a strategic partner in subjects concerning neighbouring regions such as Middle East or Caucasia, even though the current diplomatic relations stating the otherwise.

1. Structure of Turkish Administration

Administrative structure of Turkey can best be explained by centralization dominated view. In this context, central administration refers to the dependency of decision-making process to the central government and to the decisions being made by the centre [Çevik, 2004]. The centralist structure of Turkish administration is inherited from the Ottoman Empire to Turkish Republic. Turkish Republic has been highly affected by these legacies and Ottoman Empire's idea of centralization and strong central government. Main feature of this inheritance have been the strong centralized government with the control over the society and economy and the dominance of the center over the periphery [Tural, 2009]. Therefore, it can be said that Western understanding of administration is not highly developed in Turkish Republic because of the above mentioned reason.

Article 123 of 1982 Turkish Constitution introduces the principle of decentralization as a basis for the organization and functioning of local administrations as well as principle of centralization which refers to the organization of central government

[Polatoğlu, 2000, p. 69]. In other words, Turkish Constitution tries to create a balance between centralized structure of public administration system and autonomous local administrations. The Article 123 states that the public administration should function in unity and coherence in order to maintain the integrity of the whole body of national administration including provincial and local ones [Gül, Kiriş, 2015]. The idea of creating a balance between highly centralized government and autonomous local administrations causes a duality in Turkish public administration. Although there has been some attempts by politicians to strengthen local governments, Turkish public administration is still very centralized. Because of this duality, it is easier for us to analyze Turkish structure of public administration in two parts; administration in central level, and administration in local level.

Administration in central level consists of three branches that represents the three branches of government which are legislation, the executive and the judiciary. However, Turkish public administration is under the influence of executive branch which includes Presidency, the Office of the Prime Minister, the Cabinet, ministers and consultative agencies [Palabıyık, Kapucu, 2008]. The President is the head of state and used to be elected only once for 7-year term by the parliament. However, after the constitutional amendments in 2007, the presidents now are elected for a 5-year term by direct popular elections. Addition to that, with the constitutional amendments in 2017 there has been a shift from parliamentary system into some sort of a semi-presidential system in Turkish political structure.

The Council of Ministers, including the Prime Minister, represents the political wing of executive branch and it determines and implements general policies of the government and public administration [Palabıyık, Kapucu, 2008]. Although, each ministry is located in Ankara, they have the units in the provinces serving on their behalf in a hierarchical organizational structure that creates the local level of public administration. For administrative purposes, Turkey is divided into 81 provinces (İl) on the basis of geographical situation, economic conditions, and public service requirements. Provinces are the main administrative units for central government activities and they are headed by provincial governors (Vali). Yet, each ministry has a provincial and/or regional director of its provincial or regional field organization. The provincial governor also has the authority and responsibility for the supervision of the “field organizations” of each ministry. Provinces are further divided into districts (İlçe), headed by the sub-governor (Kaymakam). This makes the role of provincial governors role crucial since he/she has the duty of controlling and coordinating the activities of central government in local administrations [Polatoğlu, 2000].

However, on the local level of administration, there are not only branches of central administration, but also autonomous local administrations as well as functionally autonomous local bodies such as universities, Turkish Radio and Television Corporation (TRT) and state economic enterprises [Gül, Kiriş, 2015]. Autonomous local administrations consists of municipalities that can be categorized as metropolitan municipalities (Büyükşehir Belediyesi), district municipalities (Belediye), special provincial municipalities (İl Özel İdaresi) and villages (Köy). Role of these municipalities is to provide public services for special needs of local communities with their semi-autonomous budgets revenues and their own legal personalities [Palabıyık, Kabucu, 2008].

Although local administration might seem like they are autonomous decentralized units, they are under the strict control of central government exercised through power of tutelage. In order to protect the “administrative integrity”, central government uses hierarchical audit, which refers to an audit based upon a superior-subordinate relationship between the units or the people within the same legal entity (state). For example, the relationship between governor and district governor is hierarchical that are involved in state legal entity. The governor can interfere in the affairs and decisions of district governor due to the fact that the district governor ranks under the governor. Minister of Interior Affairs has the same rights on the governor [Turan, 2016]. This means that, local governments under the strict control of central government via administrative tutelage audit. Central administration keep the local governments under supervision in order to prevent the authorities which it gave to local governments from being used acting contrary to law rules and general interests, unity and integrity of state, and in order to provide a harmony in state services [Ünal, 2013].

2. Challenges and Problems of Turkish Public Administration

In general terms, main characteristics of Turkish public administration still fails to meet the needs of public and Western standards. Even though there has been a regression in relations with the European states and possible Turkish integration to the European Union, adopting a Western understanding of governance and good administration is still on the agenda of Turkish government. In order to achieve that, Turkey still needs to overcome several challenges.

In terms of organization, the influence of pre-republican period is still observable in Turkish public administration structure. Administrative tradition and culture of the Ottoman period, which promotes highly influential central authority and control, creates a problem in modern understanding of administration. As modern understanding of administration promotes growth of public institutions and organizations, strong central un-

derstanding of the Turkish administration has problems with distributing the tasks between central, provincial and local administrations. Thus, effectiveness and efficiency of those institutions fails to meet the expectations of society which causes high amount of red tape, ineffective distribution of authority and responsibilities. The inefficiency, bureaucratic red tape and misuse of resources in public administration lead to delays in service and consequently, reduce public satisfaction and trust [Palabıyık, Kabucu, 2008].

Another problem of Turkish administration is secrecy and closeness. Due to traditional reasons, Turkish public administration has tendency to keep the information regarding public issues as secret and non-disclosed. Therefore, access to information in this regard has always been problematic. Despite several attempts to promote transparent government and openness with the help of newly introduced laws such as Right of Information Law in 2004, openness and transparency is still an exception in public administration of Turkey [Sayan, 2013]. Another consequence of having a strong state tradition has been the development of an administrative culture which is not responsive to the needs of the citizens. Furthermore, public officials generally see themselves as a state official representing the state rather than servants of the public. As one reflection of such a notion of the state, public officials have considerable legal safeguards in relation to performing their duties [Sözen, 2012].

Participation of people who may be affected by public policy-making process is also another problem of Turkish public administration due to structure of 1982 Constitution, which restricts the notion of participation to election and election campaigns. Therefore, membership in NGO's and participation in public policy-making processes continue to be very low in Turkey. Additionally, representation of women in policy making bodies and managerial positions has always been limited in Turkish society. Therefore, lack of representation and participation can be evaluated as less public opinion about social concerns [Gül, Kiriş, 2015].

3. Administrative Reforms to Overcome the Challenges

In order to overcome the economic, social and political problems in its public administration, Turkey has undergone legal and structural reforms. It can be said that there were both internal and external pressures that pushed Turkish government to start its reformation process in public administration. While Turkey's attempts to become a full member of EU and other international organizations such as IMF and World Bank can be considered as external factors, growing demands and expectations for effective and higher quality provisions of public services by NGO's and business world can be considered as internal pushing factor [Sezen, 2011].

When we look at the content of administrative reforms, it is reasonable to classify them into two main categories. The first set of reforms might be named as “managerial reforms”, the second type of that as “governance reforms”. While managerial reforms aimed at improving economy, efficiency and effectiveness of public sector, good governance reforms focused on transparency, accountability, responsiveness and participation in public administration [Sözen, 2012].

Managerial reforms are the reforms that mostly focuses on privatization and improvements in the private sector. As a result of privatization, the number of state-owned enterprises fell drastically which helped Turkish government as a source of revenue during the economical crisis. In addition to privatization, the adoption of business management practices into public administration has been another key principle of these reforms. Introduction of strategic plans and performance-based budgeting with the aim of ensuring economic efficiency and increasing transparency and accountability was the main objective of these reforms [Kapucu, Palabıyık, 2008]. The Law (No. 5018) on Public Financial Management and Control (Kamu Mali Yönetimi ve Kontrol Kanunu) that is approved in 2003, included measures in ensuring transparency in the public financial management system as well as strategic plans that defines objectives, principles, priorities and methods to achieve these objectives.

Decentralization was also another important aspect of these reforms. Due to increasing criticism from external and internal factors concerning the highly centralized structure of Turkish administration, duties, responsibilities and powers of local governments were expanded. The new laws that are approved in mid 2000s narrowed the administrative tutelage control of the central government on local governments and also included provisions providing participatory mechanisms for local community. Besides, local government bodies are also granted the legal authority for outsourcing almost every service in their spectrum of tasks [Sözen, 2012].

On the other hand, governance reforms aimed at improving transparency, accountability and participation within public administration. In order to achieve that, the most important legal act was the Law on the Right to Information (Bilgi Edinme Hakkı Kanunu), that came into force in 2004. Article 1 of the Law on the Right of Information defines its aim as: “to lay down the guidelines and procedures for individuals to exercise their right of information acquirement in accordance with the principles of equality, neutrality and openness which are the fundamentals of democratic and transparent administration.” In this regard, public organizations are obliged to publish their basic decisions and legal regulations falling under their duty domains, and annual activity reports, through using information and communication technologies [Sözen, 2012].

Citizen participation on public matters was also another objective of governance reforms. With the establishment of City Councils which are seen as a platform to enhance public participation in local governments, and strengthening local governments structure. The regulation defines City Councils as governance mechanisms where local branches of central government and civil society organizations meet with an understanding of partnership [Beriş, Gürkan and Andıç, 2011]. By doing that, Turkey also attempted to strengthen its weak civil society with the promotion of participatory democracy whereby public services mostly provided by local actors.

Moreover, the need for establishing efficient and effective public institutions was the core component of these reforms. Various measures were taken in order to ensure that public officials can perform their duties effectively and rationally while meeting the needs of the people. These measurements covered the reductions in size and improvements in the allocation of budget, and reductions in size and improvements in the assignment of the officials [Kapucu, Palabıyık, 2008].

CONCLUSION

Thanks to the internal and external pressures, Turkish public administration has undergone a significant reform. There has been a great support for delegation of the powers of the institutions of the central government to the local, provincial levels, however structure and tradition of a highly centralized public administration continues to persist due to unitary state characteristics of Turkey. Transition of powers from central administration to local administrations remains limited despite the amendments to the constitution and laws that are passed by the parliament [Soós, 2016].

It is clear that, if Turkey still desires to be a full member of the European Union, disregarding the political factors, successful implementation of European Union law depends on the Turkey's administrative capacity. Whether Turkey is prepared for EU public policies that is based on service delivery to the citizens and businesses rather than state-centric understanding, remains a challenge.

Although the reforms has shaped the role of public institutions, especially the local ones, the nature of relationship between state and society remains untouched. Therefore, effective implementations of administrative reforms is still a challenging task, since the administrative culture favors highly centralised authority and administration. Changes in the administrative culture that changes the focus of public institutions from state to needs of society is required in order for successful implementations of administrative reforms [Sözen, 2012].

Despite several reforms and improvements, it is still imperative for Turkey to aim for further improvements in democracy, human rights and freedoms, the rule of law, the judicial system, women's position and gender equality and civil society. Such reforms would not only help Turkey to consolidate democracy, but also it would strengthen its administrative structure as well. Successful implementation of these reforms requires further improvements that shapes Turkish society positively [Gül, Kiriş, 2015].

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PUBLIC ADMINISTRATION IN GERMANY AND GREECE

ADMINISTRACJA PUBLICZNA W NIEMCZECH I W GRECJI

Summary

The aim of the article is to present the systems of public administration in Germany and Greece and the main problems of functioning these two organizational systems of public administration.

Keywords

public administration, Federal Republic of Germany, Hellenic Republic, Greece, division of powers, New Public Management

Streszczenie

Niniejszy artykuł ma na celu ukazanie systemów administracji publicznej w Niemczech i w Grecji, a także najważniejszych problemów, które mają wpływ na funkcjonowanie obu systemów administracji publicznej.

Słowa kluczowe

administracja publiczna, Republika Federalna Niemiec, Republika Helleńska, Grecja, podział władzy, Nowe Zarządzanie Publiczne

INTRODUCTION

In the beginning we would like to take a look at German unique political system. Germany “Deutschland” is a democratic federal parliamentary republic located in the centre of Europe (having a Chancellor and parliament). The country shares its borders with nine states and has a multi-party system in which two specific parties prevail since 1949 – CDU (Christian Democratic Union) and SPD (Social Democratic Party of Ger-

many). The main features of the German political and administrative system have been regulated in the constitution “Grundgesetz“ in 1949, then complemented by minor revisions after the German reunification in 1990. The Constitution most essence tells about the separation of powers, the protection of individual liberty, the human and the civil rights [Politics of Germany].

1. The Separation of Powers and Administrative System in Germany

In Germany the power is divided horizontally (legislative, executive, judicial) and vertically (among the organs of Federation). The legislative branch is in the hands of the Bundestag and Bundesrat which members are chosen in a voting. Their objective is to represent the interests of society. The Bundestag consists of 709 members (data for year 2018) while the Bundesrat counts 69 representatives (data for year 2018). The executive branch belongs to the Chancellor, the Federal Cabinet, the President, the State Cabinet and the Minister. The head of the government is chosen by Bundestag in a majority vote resulting in increased importance of role in the politics in comparison to other members of the Cabinet (“Grundgesetz für die Bundesrepublik Deutschland”). There may be few rounds needed to choose the representative while each of them is based on different rules. In the first vote the representative may be proposed by the President and this is his only possibility. If there is no majority, the Bundestag has two weeks to choose a candidate and the final decision must be again supported by the majority. In case of another failure (lack of majority) the Bundestag is forced to vote instantly and if there is still not an absolute majority, the president chooses the candidate with the highest amount of votes. In case there will be no candidate chosen, he has to disband the Bundestag. The Chancellor is the state’s executive power holder. He also chooses the candidate for a Deputy Chancellor. This function is carried by a Federal Minister, in most cases the Minister of Foreign Affairs. In case of an attack the Chancellor is privileged to lead the army. The judicial privileges are being hold by the Federal Constitutional Court and the State Constitutional Court [Federal Republic of Germany, 2006].

Referring to the constitution of Germany “Grundgesetz” the judicial power is represented by judges. This group gathers the judges and prosecutors from all the Länder working on the local level and a small amount (less than 5%) of judges working on the federal level. The “Bundesverfassungsgericht” has 8 members in its setup. Half of the representatives are chosen by “Bundesrat” and the others by “Bundestag”. The chosen judges serve the state for a period of 12 years and cannot be chosen again [Federal Republic of Germany, 2006]. The highest in priority jurisdictional organ is the “Bundesverfassungsgericht” which has independence in reference to other political organs men-

tioned in “Grundgesetz”. This organ is superior to all other organs of this state and its decisions take effect upon all. Its role is also to provide clarity and cohesion in the German Law by supervising if the federal, state laws and all parties are in accord with the constitution. Common courts deal with criminal matters and civil matters. In case of civil proceedings people may refer to the local or regional court [Federal Republic of Germany, 2006].

Germany covers 357 376 km² area in total and has 82,67 mln inhabitants (statistics for 2018). In the German administration system we distinguish 16 states (Länder) which have been merged into a Federal Republic: Baden-Wurrtemberg (since 1952), Bavaria (since 1942), Berlin (since 1990), Brandenburg (since 1990), Bremen, Hamburg, Hesse, Lower Saxony, Mecklenburg-Vorpommern (since 1990), North Rhine-Westphalla, Rhineland-Palatinate, Saarland (since 1957), Saxony (since 1990), Saxony-Anhalt (since 1990), Schleswig-Holstein and Thuringia (since 1990) [States of Germany]. There is also a categorization in the political levels. There are four different administration levels based on the competences and the area of influence of each. First of them is the federal level which carries influence on the whole area of the Federation as a nation state. The second is the Länder level which we talk about when a decision is binding for a Land or more but not the whole Federation. The third administration level covers the influence of the districts and towns which do not belong to any of them. The fourth level is the local level which includes the administration and politics of towns and municipalities [Federal Republic of Germany, 2006].

2. The Federal Level of Administration in Germany

Now, we would like to take a look on the federal level of administration in Germany. Supreme bodies of the Federation are: The Federal Parliament (Bundestag), the Federal Council (Bundesrat), the President of the Federation (Bundespräsident) and the Federal Government (Bundesregierung). In addition, federal authorities are the federal courts (Bundesgerichte), as well as the Federal Bundesverwaltung. The Federal Parliament is made up of 778 members, with a four-year mandate. It is a decisive for the legislative process, federal body. The Bundesrat competences and law making features are limited to the ones described by the Basic Law “Grundgesetz”. Its competences in the legislative branch are divided in such categories as:

1. exclusive legislation of the Federation – it concerns exclusive competence of the Federation and including areas of law that must be regulated in a single way for all Länder. This is especially true of external issues defense policy, defense, border protection, monetary policy as well as air transport,

2. competitive legislation – the federal states may issue laws as long as the Federation does not regulate these fields on its own. This category includes civil, criminal, economic, labor-law, and law, as well as areas of law relating to the housing, road traffic, waste management, atmospheric pollution and noise control,
3. legislation/framework of the Federation (Guiding) – the Federation is limited to general guiding principles. This category includes areas such as spatial planning, protecting the environment and the landscape, as well as the management of water resources [Federal Republic of Germany].

On the federal level there is an office of the President of the Federation (Bundespräsident). The structure of a federal state requires the existence of a state body, which on the one hand will take care of the interests of the Länder in the federal and legislative decisions of the Federation and on the other hand, act as a mediator [The President in Germany].

On the federal level functions the Federal Council (Bundesrat). As a central federation organ, it essentially implements the representation of the States and guarantees their influence in the Federation balancing against the Federal Parliament. It participates in the legislative process and the administrative policy of the Federation. It is made up of 69 members of the governments of States, with a representation commensurate based on the population size of each federal state [Bundesrat of Germany].

There is also the Federal Government (Bundesregierung) and the Federal Administration (Bundsverwaltung). The Federal Government (Kabinet) has its power in the branch of state administration. As a political governing body it manages the states and policy cases for which the Federation is responsible. It is important to underline that these are mainly cases referring to the defense and monetary policy. The Federal Government is made up of the Federal Chancellor (Bundeskanzler) and the Federal Ministers (Bundesminister), who are appointed on a proposal by the Chancellor, by the President of the Federation. The federal government is a collective body in which the Chancellor holds a prominence place due to his responsibilities and privileges. The article 63 of the German Constitution tells about the process of choosing a Chancellor. The Federal Ministers run autonomously and under their own responsibility within the governmental directions. The Minister is responsible at the federal level for matters of spatial planning, traffic, building and housing. The Federal Government exercises control over the Federal Administration (Bundsverwaltung) [Das Grundgesetz].

According to the federal principle administrative objects are subjects between the Federation and the Länder. Within this statement the following forms of administration are distinguished: federal government mandated by the Federation, federal administration

and pure federal administration. Pure federal administration is limited in relation to the federal administration to only a few areas [Ulrich, 2003]. Its structure is following:

1. highest federal agencies – these are the administrative organs such as the Federal President (Bundespräsidialamt), the Federal Chancellor (Bundeskanzleramt), as well as the individual Federal Ministers (Bundesministerien). This category also includes the Federal Audit Office Congress and the Press Office of the Federal Government,
2. higher federal agencies – these are autonomous central organs managing territory of the Federal Republic,
3. medium federal agencies – their competence include only one particular branch. Significant organs such as the Senior Finance Directorate, individual military sectors, as well as the Directorates of Water and Shipping.

3. Land Administration (“Länder Administration”)

Each of the 16 Länder has its own Constitution and clearly assigned terrain. It is also an autonomous political entity, with its own government and administration, as well as its own courts.

4. The Management and Planning System in Germany

The federal states are required to exercise their responsibilities on the basis of the Fundamental Law and the individual federal constitutions. The focus of the management, as well as the participation (through the federal council) in the federal legislative work. The legislative body of the federal states is the “Landtag”. It is worth noting that the federal states are confined to legislative work for sectors not covered by the Federation. Regarding the federal governing framework, the Länder have the competence of institutionalizing. In the field of land planning, federal planning laws are issued (Landesplanungsgesetze) to the Federal Spatial Planning Guideline Law (Bundesraumordnungsgesetz). The Landesparlament regulates the flat level. It is therefore the only, directly, democratically, elected by the people state organ. The Landesregierung is made up of the Prime Minister and his representatives (Ministers chosen by him) [The Planning System in the Federal Republic of Germany]. The Prime Minister is elected by the Land Parliament. In each Land there is a Minister responsible for spatial planning. In general terms, the Federal Administration can be described as following: The administrative competence of the Länder is distinct from these which arise on the order of the Federation (Bundesauftragsverwaltung) and

to these of “Landeseigenverwaltung”. The Federal states are required to cover objects for which they have exclusive modality. This applies, for example, to schools, police, and as well for the “Landesplanung”. In addition, the federal administration is allowed to use the federal laws, for its own benefit and on its own responsibility. This is the case, for example, for areas such as town planning, crafts and environment protection. The structure of administration in the federal states is characterized by state co-operation services (direct state administration) and municipalities (indirect state administration) [The Planning System in the Federal Republic of Germany]. This branch of administration is implemented by the services of the Administrative Regions (Regierungsbezirke), which assemble all the responsibilities for all matters that are their spatial extent and which are not exercised by any other authority. The services of the Administrative Regions are therefore engaged in their territory managing on a horizontal level, as well as mediating between federal Ministries at the highest level and the municipal (local) government organizations at the lower level. An important role plays the Regierungspräsident. The services of the Administrative Regions have to fulfill important responsibilities in the field of land planning. Although the federal authority is one of the immovable points of the German Constitution, the presence of the Länder is not unchanged. It is possible on the basis of relevant regulations of the Fundamental Law to promote a reorganization of its federal territory.

5. Public Administration in Greece

Now, we would like to take a look at public administration in Greece. Leaving from the post-war-Weberian model of bureaucracy in order to a view of modernization, the Greek administrative system has been submitted to several reform programs. At the beginning, there will be a short presentation of the political system of Greece. The desired purpose of the article is to present the public administration, the new public management and explore the administrative changes which occurred in the field of the public administration in Greece. There will be also described the problems and the weaknesses of the public area. It is claimed that the Greek administration has been unable to track and apply a compatible and operational administrative paradigm because every transformation manufactured weak results. Even though the Greek public administration has experienced a lot of transformations, none of these reorganization program seem to have bring a specific administrative model. This part of the article will expand a lot of facts about old and more recent developments in the area of public administration.

6. Political System of Greece

The official name of the state is the Hellenic Republic (Greek: *Elliniki Dimokratia*). Under the Constitution of 1975 (modified in 1986), Greece is a parliamentary republic, with the president as head of state and head of the armed forces. Greece since 1981 has been a member of the European Union, since 1952 member of NATO and since 2002, the Eurozone. There is a division of power into law, executive and judiciary [Dagtoglou, 1991, p. 21]. Legislative power is exercised by the Parliament and the President of the Republic and executive power – by the government, judicial power and independent courts. Parliament consists of one chamber – the Chamber of Deputies of Greece. 300 parliamentarians are elected in general and secret elections for a period of four years. 250 deputies are elected in proportional representation. The remaining 50 seats in the parliament are divided between the parties that won the majority in direct elections, or in full get the party who obtained over 41% of the votes. The candidate for a deputy must be a Greek citizen and be over 25 years of age. The electoral right is for people who are 18 or older. Participation in elections in Greece is not only a privilege, but also a constitutional duty of every entitled person. For non-participation in elections, administrative sanctions, for example, refusal to issue a passport, etc. may be a disadvantage. The inconvenience is the need to participate in elections in the place of birth, however travel costs are reimbursed by political parties [Art. 51, par. 4 of the Greek Constitution]. The last parliamentary elections took place on 25 January 2015, in the middle of the term of the previous parliament, which was dissolved due to the impossibility of electing a president. The Radical Left (SYRIZA) won the most votes – 36.34%, followed by New Democracy – 27.81%. SYRIZA received 149 seats in the parliament – only two of them were unable to govern themselves. That is why it immediately joined the coalition with the far-right party Independent Democrats, which won 17 seats [Smith, 2015]. Both parties share a lot, but they share one thing: resolute opposition to the policy of “tightening the belt”. The right to court is guaranteed by the Constitution. Courts are divided into civil, criminal and administrative. There are civil district courts and twelve appellate courts. Criminal courts are divided depending on the crime category. The Supreme Court examines appeals regarding both civil and criminal cases. There are administrative courts of first instance and the Supreme Administrative Court. The Supreme Special Tribunal examines the compliance of laws with the constitution and also resolves competence disputes. The current administrative division of Greece is the result of the Kallikrates (Kallikratis) reform and has been in force since 1 January 2011. The previous system of 13 regions, 54 county and 1033 municipalities and communities was replaced by 7 administrations, 13 regions and 325 municipalities [Kallikratis plan]. The highest unit

of administrative division are administrations managed by government secretaries appointed by the government. These are new units that did not have their counterparts before the reform. Each administration includes 1, 2 or 3 regions, similar to those reforms from before. Regions managed by voivodes and local councils are the equivalent of our voivodships, with the difference that they are fully self-governing (the voivode is now elected by citizens and not imposed by the government as at present in Poland and in Greece before the reform). They are divided into 325 communes – also local government – managed by the mayors and the commune council [Kallikratis plan].

Generally, the reform has simplified the administrative division of Greece by eliminating the former county/prefectures – intermediate units between regions and municipalities. Instead of county, subregions (managed by the voivode) were created, but they are less important to them and do not have the status of administrative units.

7. Stages of Evolution of Public Administration in Greece

The administrative system experienced a lot of separate stages of evolution uprising from the post-war period, when its features were somehow influenced by widely trends. The goal of this section is to explore and identify the characteristics of the Greek administrative model over time.

7.1. The Post-War Model

In the post-war era, the system of public administration was headed in the path of heavy statism. Moreover, the public organizations were a huge bureaucracies which were performing on the basis of formal rules and procedures and submitted to the absolute control of the political system. When the military junta period arrived (1967-1974) the organizational and functioning attributes were not influenced. Although we can say that authority and hierarchy aspects were emphasized. After the comeback of democracy (from 1974) they focused on democratization of the public area. During the next years, the expansion and development of the bureaucracy brought increase in public employment, highly public spendings and collection of public debt and the fiscal unbalances [Pagoulatos, 2013].

7.2. The Era of Modernization and Europeanization

The early 1990s was the time when the domestic system of administration was influenced by the obligations related to the action of European integration, liberalization and globalization [see: Spanou, 1998]. An effort to make significant changes in the dominant scheme began in the early 1990s, although the truth authentic time when the

Greek administration started to change in the modern era from 1996 onwards. During the 1990s-2000s, the process of state reform was influenced by the movement to management thoughts and models of economy related to the (neo) liberal disquisition [Williams, Marathappu, 2013].

7.3. Debt Crisis in Greece

The rapidly increasing fiscal debt crisis that hit the economy of Greece in 2010 constituted as the main point for introducing regulations at all levels of the public administration [Pelagidis, Mitsopoulos, 2006]. The public sector was placed at the head of reforms which were required, dictating some drastic reduction of its scope, size and especially cost. The main goal that they wanted to achieve was to improve the efficiency and effectiveness of public administration. In order to reduce the public debt the actions that they took was cost-cutting [El Erian, 2016]. The policy that they choose included downsizing measures, cuts in public expenses, lay-offs, structural reorganization, privatizations and liquidation of public entities. They focused on fiscal functions, taxation and public expenses [Monokroussos, Thomakos, 2013]. These reforms were linked with detailed goals, strict timetable for achieving goals and were regularly monitored. However a very significant problem was that the policies and changes which they wanted to implement were limited only to theory. The Memoranda signed between the government of Greece and the “Troika” included a new institutional economics and the New Public Management principles, such as substantiation for economic efficiency, better performance and better goal-oriented administration. So, Memoranda proposed a new pattern of conduct in public administration which would help Greece to rebuild the public sector despite the hard time. Despite the fact of the proposed new patterns, the changes were translated into policies mostly in terms of minimizing expenses and cutting costs and not in a strategic context. It is worth adding also that the goal of serving the citizens in better way that was regularly appealed in the rhetoric of the reforms were absent from the policy agenda. The aspects that were absent are public service aspects, such as participation and democratic citizenship. In general, despite the established goals and the external pressure, the acts that were taken brought only short-term fiscal improvements, but the structure of the effects was weak and did not help solving the internal problem of public administration. Moreover, the policy formulation was rather incompatible and did not take into consideration the actual ability of the administration to accept the required adaptations.

7.4. Searching a Paradigm

During the first post-war decades the administration was inspired by Weberian bureaucracy and the Southern European public service sets. In the mid-1990s the domestic

model was affected by economic and managerial elements, also by Europeanization pressures [Lampropoulou, Oikonomou, 2013]. In the debt crisis era the transformations that the Greek administration took up included transformations in a neo-liberal context. Greek public administration is characterized by low performance, irrational actions, politicization, legalism, formalism, corruption, lack of coordination, ad hoc arrangements. The size and the enormity of these shortcomings explain the weak results of all reforms that they attempted to bring to life. All these facts about the bureaucracy in Greece, weaken the hypothesis of rational and consistent paradigm [Social Issues in Focus].

8. The Problems and Weaknesses of the Greek Public Administration

The Greek public administration has an intense pathology and bureaucratic dysfunction, the characteristics of which can be analyzed in two categories: firstly, the tendency to concentrate the decisive power and influence the political system, and second, the structural deficiency or reduced capacity of the country's administrative machinery. To be more precise the first set of features of administrative pathology, the tendency to concentrate decisive power, influence and competence develops at multiple successive levels:

- a) the executive, within the political system,
- b) the Prime Minister and the government, within the executive branch,
- c) political leadership, with the public administration,
- d) senior management levels, with public services and organizations.

With the regard to the second set of characteristics, the inappropriateness of the administrative mechanism arises:

- a) from the extremely expanded, in relation to the actual results it produces, the organizational size of the staffing of the public services, which are even characterized by the anachronistic and inadequate structure due to unequal distribution of human resources,
- b) inappropriate staffing, which is almost always as a result of the operation of either the customer system and the status of political favor or the reduced efficiency of recruitment methods,
- c) by the impressive administrative underdevelopment, in the sense of the absence of a modern spirit, methodology and management philosophy at almost all organizational levels. As a consequence of the maintenance of bureaucracy (legalism, responsibility, low productivity, substitution of goals), lack of procedures, knowledge and feedback capacities,

- d) the substantial failure and limited effectiveness of reform measures and ventures that either accelerate the capacity crisis of the system.

In more general context, public administration is fully dependent on political fluctuations.

From the point of view its weaknesses could be summarized as follows:

- a) lack of stable and reliable rules,
- b) lack of planning-planning coordination,
- c) lack of orientation towards the client, citizen and to the result,
- d) lack of flexibility, decentralization of responsibilities,
- e) lack of care and over emphasis on formal legal arrangements.

Another notable feature of the Greek political-administrative system is the non-existence or inaction of control mechanisms.

9. Towards New Public Management in Public Administration in Greece

The new model of public administration and public policy was based on the theory of individualism through the orientation towards market orientation. Based on the theory of individualism, public administration must therefore be based on competition rather than the strict rules imposed by the traditional bureaucracy model. Citizens should be treated as customers. Profit is the main goal and cost minimization is looking for new perspectives and competitive proposals. A fact that reveals the indifference to the production of results and the resulting spread of responsibilities. The classical model of public administration is a complex in essence, sample of social and legal characteristics that are elaborately knit in a regulatory framework and for higher public purpose: the public interest. New Public Management (further as: NPM; was first developed in the United Kingdom on the Thatcher and Reagan governments and then on the Bill Clinton government [Μιχαλόπουλος, 2003]. It is a new way of operating the public sector according to Hood [Hood, 1991] and goes against the traditional hierarchical public administration. The NPM is based on the theory of individualism and selfishness and is known as administrative reform or governance [Ongaro, 2009].

The characteristics of the NPM are:

1. decentralization by promoting the autonomy of administrative bodies and regional units,
2. improving the provision of services to citizens at state and local level,
3. customer orientation by making administrative decisions transparently and spiritually close to the citizens,
4. greater emphasis on production control of both public and private enterprises,

5. e-government using modern technology and investment plans,
6. regulatory reform with a local and European framework support,
7. flexibility and innovation in all sectors of society, market and, by extension, in all areas of everyday life,
8. emphasis on marketing and rules of the market,
9. implementation of private sector administration practices in the public sector,
10. delivering and targeting the market with plans and investment assessment [see: Argyriades, 2006; Dunleavy, Hood, 1994].

CONCLUSION

In conclusion, we would like to notice that Germany is a federal parliamentary republic with a head of government (the chancellor) and a head of state (the president who is primarily responsible for representation of the country). Greece, on the other hand, is a parliamentary representative democratic republic in which the Prime Minister – has more political power, and the head of state – the president – has mainly custom duties. The government exercises executive power. Germany consists of 16 Länder, each of which has their own constitution and is largely autonomous in their internal organization. Of these, the three are Länder-cities: Bremen, Berlin and Hamburg. Greece is divided into 13 regions which are headed by regional governors. Both countries belong to the EU and to the euro area.

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CULTURAL DIVERSITY AND PUBLIC ADMINISTRATION IN JORDAN

RÓŻNORODNOŚĆ KULTUROWA I ADMINISTRACJA PUBLICZNA W JORDANII

Summary

The aim of the article is to present the cultural diversity and public administration in Jordan. The Hashemite Kingdom of Jordan is a monarchy. Its legal order is based on the provisions of the Constitution of January 1, 1952. Because of the nature of its cultural and demographic diversity, the Kingdom has been affected in terms of legal sovereignty. The legal system of the country is characterized as a mixed legal system between civil and Sharia law with the classical separation of powers.

Keywords

culture, diversity, public administration, the Hashemite Kingdom of Jordan

Streszczenie

Celem niniejszego artykułu jest przedstawienie występującego w Jordanii zróżnicowania kulturowego i administracji publicznej tego kraju. Jordańskie Królestwo Haszymidzkie jest monarchią opierającą swój porządek prawny na Konstytucji z dnia 1 stycznia 1952 r. Istniejąca w kraju różnorodność kulturowa oraz demograficzna mają wpływ na system prawny tego kraju, który stanowi połączenie prawa świeckiego z prawem szariatu. Prawo jordańskie gwarantuje także klasyczny trójpodział władzy.

Słowa kluczowe

kultura, różnorodność, administracja publiczna, Jordańskie Królestwo Haszymidzkie

INTRODUCTION

The Hashemite Kingdom of Jordan (in Arabic language: Al-Mamlaka al-Urdunn-iyya al-Haszimijja) is a monarchy which legal order is based on the provisions of the Constitution of January 1, 1952 [The Constitution of the Hashemite Kingdom of Jordan of January 1, 1952, further: the Constitution]. According to the article 1 of The Constitution “The Hashemite Kingdom of Jordan is an independent sovereign Arab State. It is indivisible and inalienable and no part of it may be ceded. The people of Jordan form a part of the Arab Nation, and its system of government is parliamentary with

a hereditary monarchy.” The religion of the State is Islam and Arabic is its official language [Article 2 of the Constitution].

Because of the nature of its cultural and demographic diversity, the Kingdom has been affected in terms of legal sovereignty. The domestic legal system of the country is characterized as a mixed legal system between civil and Sharia law based on the rule of classical separation of powers. Jordan was established in 1951 and inherited a parliamentary type of Government. The State ensures freedom of religion, press, private life and property [see: Chapter II of the Constitution titled “Rights and Duties of Jordanians”]. Since 1989’s elections, the parliament has lifted martial law and authorized political parties, with further elections in 1993 and 1997. It should be noted here that with regard to the political system of Jordan, the country enjoys a cultural diversity in terms of the nature of societal composition and that many factors have influenced this diversity, including the most important – the political factor, which has led Jordan to the political stability in the region and make it an important economic centre of the region and attractive location for foreign investors.

The Hashemite Kingdom of Jordan is located in the west of Israel and the Jordan river. It is a country at the crossroads of the following continents: Asia, Africa, and Europe. Jordan shares borders with Iraq, Israel, Saudi Arabia, Syria and Palestine. The country shares maritime borders with Egypt neighboring countries too. Due the recent political unrest in the middle-east region, Jordan has seen a huge influx of immigrants and refugees. The open policy of Jordanian government ensures that those people are welcomed into its borders, and are allowed to share their culture and values to enrich the Kingdom. Furthermore the relatively big percentage of the immigrants are young, skilled workers, who carries further economic, social and political benefits for the Jordan as a whole [Visit Jordan].

I would like to point out that in 2018, the population¹ of Hashemite Kingdom of Jordan is 9,903,802 million, male 50.64%, female 49.36%. Jordanian society is one of the youngest in the world. One with fifth of the population in the Kingdom is in the age group 15–24. Ethnically in Jordan live many nations: Muslim Sunni (92%), Christians (mostly Greek Orthodox) (6%), Circassia’s (1%) and Armenians (1%) [The Official Website of the Jordanian e-Government]. Therefore, article 6 of the Constitution requires there be no discrimination between people who live in Jordan as regards to their rights and duties on grounds of race, language or religion. And Constitution ensures that all Jordanians are equal before the law.

1. Culture in Jordan

It should be underlined that nowadays culture is a wide concept. Culture can be defined in many ways. And it should be noted that culture cannot be summarized in a few words. Culture, according to the website of the Ministry of Culture of Jordan, “is a cumulative result of human experience along the continuous extension of history within a geographic domain. It is a group effort, not produced by the elite alone, although it is directed and lead by it that includes, within the unit, various types and colors that are formed by virtue of the development of society, and it is ever growing and reacting with cultures of different nations, in both directions, as long as communication channels with the other are open and opportunities for friction are available and well-facilitated, as is currently prevalent” [Ministry of Culture].

It should be noted however, that such openness carries its burdens. Art and culture industry in Jordan is fragmented between varied products, each with a unique need for marketing, economic analysis and artistic needs. Due to that the Ministry of Culture has to oversee a branching industry, with national and expatriate product being distributed freely through both public and private channels. “Its interests and objectives also vary, as each has its own interest in the prevalence of the cultural patterns that suits it and achieves its interests, which indicates that culture is a distinctive factor in comprehensive development and a hotline of confrontation between nations in an age where traditional confrontation methods lose their effectiveness after losing their ability to create it, in light of prevailing knowledge and globalized culture.” [Ministry of Culture]

The culture of Jordan is mostly based on Arab and Islamic elements. However, nowadays in the country there is also visible a large influence of western culture (especially in the newly emerging culture). The Hashemite Kingdom of Jordan has always had an intersection with the three continents of the ancient world. Thus, due to its unique policy and geographical location Jordan can be seen as a focal point for the surrounding States culture. Diversity has always been central for Jordan, and it shows in the variety of customs and folklore, which are all distilled with the unique Arabic homogeneity [Jordan Tourist Board].

The very important aspects of the Jordanian culture are hospitality and generosity of Jordanian people, and cultural diversity. Cultural diversity is a part of Jordan’s cultural coexistence model, roughly translated to the “Jordanian Spectra”, the ideal assumes that every minority that participates in culture, increases the sum of its total value (i.e. the movement of Iraq citizens to Jordan). Through this acceptance Jordan has become an important cultural center of the region, and enjoys a rich and diverse art movement. Amman itself reflects that with its numerous theatres, galleries and art centers [Al Ghad, 2005].

Traditionally Jordanians enjoy expressing their culture through clothes, costumes and dances. An example of one is “dabke”, a traditional dance during various festivities. This dance traces its roots back to the military, where it was danced in order to evoke soldiers’ feelings of enthusiasm and bloodlust [The Dabke – An Arabik Folk Dance, 2005].

Historically this depth of cultural exchange is not a novelty in Jordan. Its location has allowed the Kingdom to be a melting pot of various nationalities and customs since the antiquity. Through ages and progression of Islamic history until the establishment of the Empire of Jordan in 1921, Jordan has welcomed varied host of people such as the Arabs, Circassians, Kurds, Armenians, Chechens, Jews and Europeans. While united under one flag all of Jordans component cells were allowed to maintain their unique characteristics and enjoyed a host of what is currently known as “human rights”, such as the freedom of religion and practice, free speech and respect for private life and belief [The World Factbook, 2015].

2. The Role of Women in Jordanian Culture and Public Administration

It is worth emphasizing that nowadays women hold greater role in reviving the culture in Jordan, and in recent years it has become clear that they are the frontrunners of the Jordanian culture in the public sphere. Especially young women are strongly encourage to pursue a career in arts, where – as it is widely agreed among Jordanian society – their perceived sensitiveness can be more valued and influence the rest of society.

I would like to point out that Jordanian women² during recent times, managed to break into many areas that were previously reserved for men. Contrary to their counterparts in neighboring countries, Jordanian women are able to achieve leadership roles in the public sector, such as the position of the Director and Deputy Prime Minister, members of the parliament, judiciary, trade unions etc. Additionally the institution of “alcutta” in the House of Representatives is promoting women’s status in Jordanian society [The website of Alraicenter, 2011].

Two notable examples of women’s public participation are the Royal Commission on Human Rights, which is chaired by the Queen Rania, and the National committee for Women’s Affairs chaired by the Princess Basma. Both of those institutions have been active politically and legislatively in their fight for equality and women rights [Human Rights Day, 2013].

The Constitution of Jordan has been drafted in a way that emphasize equality and fair treatment. The goal of the Drafters was to create an inclusive society and support any and all effort of women and minorities in their struggle to achieve equal social footing. Furthermore Jordan is party to various international conventions aimed specifically

at providing women with a high and equal standard of living (such as the 1992 Convention on the Elimination of All Forms of Discrimination Against Women). Currently women have proven themselves to be equal partners to their male counterparts in all fields of work, and hold high position in both public and private sector. With agriculture, education and health industries being particularly female oriented. This push for equality has inadvertently resulted in economic and social growth, with visible reduction in unemployment and increased standard of living for the Kingdom as a whole [see more: Al Shalabi and Al Assad, 2012].

As for the role of Jordanian women in public life the Qur'an doesn't distinguish in mandating religious men and women stating that both men and women have responsibility in the community.

It has to be point out that the Majesty King Abdullah who handed the reins in the year 1999 up to open the door wide for Jordanian women in order to contribute to the progress and construction operations. The King understood the necessity of an inclusive and equal society that makes no distinction based on gender, as the goal to which Jordan should aspire. And this begun the campaign to present women as essential partners in building economic, social and cultural system of Jordan [Arab Army, 2010].

Nowadays in Jordan are currently dozens of Jordanian women's organizations and private bodies dealing with women's affairs and working to enable them to achieve great achievements in various fields [The website of Woman Organizations in Jordan].

Furthermore King Hussein Allah has encouraged women to join the armed forces of Jordan, seeing their successful inclusion in other areas of everyday life. By order of King's Commander – Abdullah II Bin Al-Hussein, the military begun to train female staff in nursing, support and logistics positions and include them in active military duties. Since that the rate in which Jordanian women are employed in the military has been steadily rising [Arab Army, 2010].

It is said that Jordanian armed forces has been eager since the beginnings of the principle of equality between males and females between the members. Directorate of women's affairs was established to contribute to raise and develop the role of women in the Jordanian armed forces and focuses on the principle of equality and equal opportunities between men and women [The website of Civil Society Organizations in Jordan].

“No culture can live if it attempts to be exclusive” said once Mahatma Gandhi [Gandhi, 1959, p. 173]. It is uncontroversial that the survival of any community depends on accepting change and on interacting with different neighboring communities. Flexibility and willingness to change are the main keys to the advancements of any society [Altakhaineh, 2013].

3. Branches of Power in the Hashemite Kingdom of Jordan

Now I would like to present the separation of powers in the Hashemite Kingdom of Jordan. The separation of powers is a vital element of Jordanian culture in public sphere of life.

3.1. Legislative Branch

Legislative power in Jordan is vested in the National Assembly and the King. The National Assembly consists of the Senate (Majlis al-Ayan) and the House of Representatives (Majlis al-Nuwaab).

The Senate consists of the Speaker and no more than half of the members of the House of Representatives. Senators are appointed by the King. In order to be the Senate member one should be over 40. A period of membership in the Senate lasts 4 years, the appointment is renewed every four years [The website of the Jordanian Senate]. According to the article 60 of the Constitution “Senators whose term of office had expired may be reappointed for a further term.” [Article 60 of the Constitution]

Members of the House of Representatives, in accordance with the current Election Act, are elected in direct secret ballot. In order to be a member of the House of Representatives one must be over 30. The term of office of the House of Representatives is four years. However, the term of office can be extended by Royal Decree for at least one year and for not longer than two years.

Only Jordanians can be the members of the Senate and the House of Representatives.

Both chambers of the Jordanian National Assembly have the right to vote on legislation. Proposals are referred to the House of Representatives by the Prime Minister. And they can be accepted, amended or rejected by the members of the House of Representatives. It has to be borne in mind that each proposal is referred for consideration to a special committee in the House of Representatives. In the case of acceptance the proposal by the members of the House of Representatives, it is referred to the government which is obliged to draft it in the form of a bill and submit it back to the House of Representatives for its acceptance. If a bill is approved, it is passed to the Senate for debate and a vote. Approved bills are submitted to the King, who grants his consent by royal decree or returns the bill unapproved. In the latter case, he has to justify his refusal [The Legislative Branch].

3.2. Executive Branch

Executive power in Jordan is vested in the King and handled by his ministers in accordance with the provisions of the Constitution [Isaias and Jennings, 2013].

According to the article 28 of the Constitution “The Throne of the Hashemite Kingdom of Jordan is hereditary to the dynasty of King Abdullah Bin Al-Hussein in a direct line through the male heirs” pursuant to the provisions listed in that article. Due to the article 30 of the Constitution “The King is the Head of the State and is immune from every liability and responsibility.”

The Council of Ministers is composed of the Prime Minister and of a number of ministers pursuant to the need and public interest [article 41 of the Constitution]. One Minister may fulfill more than one function, and it is left to the Prime Minister to organize their own cabinet [Hashemite Kingdom of Jordan, 2004].

The Cabinet is responsible for managing all internal and external affairs of the State, except for what has been assigned or entrusted such matters under the Constitution or any other legislation to any person or entity [Hashemite Kingdom of Jordan, 2004].

The Prime Minister and Ministers are accountable to the House of Representatives joint responsibility for State policy, and every Minister accountable to the Parliament on the work of his Ministry, King’s oral or written no Ministers abandoned their responsibility (art. 48 and 51 of the Constitution) [Isaias and Jennings, 2013].

There are following ministries of Jordan:

- Ministry of Interior,
- Ministry of Municipality Affairs,
- Ministry of Planning and International Co-operation,
- Ministry of Public Sector Development,
- Ministry of Finance,
- Ministry of Political and Parliamentary Affairs [Isaias and Jennings, 2013].

To conclude, I would like to add that the kingdom’s vision is always been considering the seeking of promote the decentralization and advocates for the implementation of key open government principles including participation, transparency and accountability. This vision places citizens at the heart of the reform process. The endorsement of the Decentralization Law and Municipality Law by parliament in 2015 which Jordan now is leading to the way of successes and the improvements which could lead to impressive and tangible changes for the shape of the recent kingdom.

3.3. Judiciary Branch

Jordanian’s law guarantees judicial independence. In Jordan jurisdiction is vested by the courts of different types and degrees of all judgments in accordance with the law in the name of the King. Article 97 of the Constitution states that Jordanian’s judges are independent and subject to no authority other than the law. Regular and legitimate court judges are appointed and recalled by a Royal Decree in accordance with the provisions of the laws.

According to the article 99 of the Constitution there are three types of courts in Jordan:

1. regular courts,
2. religious courts³,
3. special courts.

As stated in the article 100 of the Constitution “The types of all courts, their levels, divisions, jurisdictions and the manner of their administration shall be specified by a special law, provided that such law shall provide for the establishment of an Administrative Jurisdiction in two levels.”

The courts are open to everyone and are protected from interference in their affairs, and the hearings are public unless the Court deems to be confidential to public order or morality [Isaias and Jennings, 2013].

Barring special cases, where the case will be relegated to the religious court, all legal matters in Jordan are delegated to its network of public courts [The website of Judicial Council].

4. Problems in Public Administration in Jordan

Jordan’s proximity to the military conflicts in Syria and Iraq has resulted in a large influx of refugees which has put additional pressures on available economic opportunities and access to public services (i.e. housing). High vulnerability of the economy to external economic influence given the dependence on international grants, relatively weak private sector activity and high import levels due to adverse geographical characteristics (i.e. water, energy, food) [European Commission, 2018].

According to the Report of OECD from 2017 “High unemployment and low economic participation rates affect all groups in society but in particular, women (i.e. only 16% of women participate in the labor market) and youth’s, the short lifespan of governments and parliaments has threatened the continuity and sustainability of government initiatives. Strong tribal affiliations continue to be a major determinant of political life and sustain the role of the parliament as a service provider rather than policy shaper or oversight body of government action. A bloated public sector (i.e. public salaries and pension obligations account for 27% of annual government expenditures) leaves limited fiscal space for investments and the high centralization of political power and administrative organization in policy planning and service delivery.” [OECD Report, 2017]

Abovementioned Report of OECD states that: “The need to improve administrative capacities and self-generated resources at the governorate and municipality level has resulted in dissatisfaction with the performance of sub-national government. Jordan

is characterized by large regional (economic) disparities, and poverty remains a national challenge in among both the rural (16.8%) and urban (13.9%) population (2010).” [OECD Report, 2017]

Moreover, the Report of OECD states that the implementation of the national obligations in terms of creation an open, participatory, transparent and accountable governance in Jordan has been achieved thanks to the absence of institutionalized forms of COS/ citizen engagement across all levels of government, lack of the integrity system and the legacy of traditional norms. [OECD Report] “This has hindered equal opportunities for all segments of society, including women and youth, to fully participate in all spheres of the Decentralization Law and Municipality Law by parliament milestone in translating King Abdullah II’s vision into practice. Through the elected governorate and local councils, the laws introduce and unprecedented opportunity for public participation in national and local development.” [OECD Report, 2017]

Nowadays one of the most important issues for young Jordanians is the idea of “wasta”, which assumes that social position and seniority are sufficient qualification for office, or other position of power within public administration. The long term-chair is the concept of the same person taken the power of position for too long period of time without consider the idea of changing the concept of ideas and visions of person’s could be the main way to improvements and give the equal chances to other’s to have the chance to be part of this process. This concept is based on the idea that the old elders are more qualified and more experience which is ignoring the role of youth resources to have the chance to push the fresh ideas and even the experience into practical and blocking the way of another vision of thinking and creativity to create the influence for improvement in all dimension’s in public administration.

CONCLUSION

In conclusion I would like to say that in spite of the political conflicts and unstable environment and wars in the Middle East which especially affected Jordan, as well as facing challenges in the economic and political spectra, Jordan strongly stayed in the race of strength in the area, which is reflected in the impact and the ability of Jordan to face such challenges. Jordan didn’t simply survive but kept evolving and growing and worked to develop as much as possible of the internal and external perspective. The political stability in Jordan reflects the improvement that reached and could be reach in the future.

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NOTES

¹ Population of Jordan has been increasing lately according to the statistics and because of the unstable situations for the neighboring countries we can notice the number of immigrations

² Jordanian women had long history for women's rights which make it unique and strongly binding to the rights of participation.

³ Considering the religious cases as marriages.

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CULTURAL DIVERSITY: HOW TO MAKE IT WORK?

RÓŻNORODNOŚĆ KULTUROWA: JAK SPRAWIĆ, BY FUNKCJONOWAŁA?

Summary

In this paper the author analyzes the importance of cultural diversity in modern world. The aim of this article is to present the board issue of cultural diversity that is the subject of interest of various academic disciplines. The text is also a reflection on a question about the way in which contemporary national cultures change under the influence of global trends.

Keywords

culture, diversity, cross cultural communication, challenges, globalization

Streszczenie

W artykule autorka dokonuje analizy znaczenia i wpływu różnorodności kulturowej na współczesną cywilizację. Celem artykułu jest prezentacja szerokiego spektrum problemów związanych z różnorodnością kulturową będącą przedmiotem badań różnych dyscyplin naukowych. Artykuł stanowi próbę refleksji nad sposobami zmian współczesnej kultury pod wpływem globalnych trendów.

Słowa kluczowe

kultura, różnorodność, komunikacja międzykulturowa, wyzwania, globalizacja

INTRODUCTION

The world we are living in currently is more diverse, more multicultural and constantly evolving than ever before in the history. Human beings feel the necessity of belonging to a particular grouping for various reasons. Becoming a member of the group is followed by adjusting to the internal rules of the culture and being devoted to its identity. With the movement of people from one geographical point to another, individuals from different cultural settings that come along together to perform human interaction face misinterpretation or misunderstanding of each other's behavior style. While culture is part of human personality, it may not always be the case, and may not be used as a ref-

erence to identify an individual. During a cross-cultural interaction, humans usually do not focus much on adapting to the host culture but feel the need to take pride in their native one. It is important to balance both preserving the familiar cultural identity and making effort of embracing new cultural logic for a successful intercultural conversation. The paradigm of multiculturalism cultivates a climate in which individuals from dominant and non-dominant cultures coexist as well as thrive. This article proposes a new process for managing diversity that facilitates the development of a multicultural world by offering a way of thinking that focuses on establishing discussion and action on common issues we share as members of human race, rather than of specific cultural groupings.

1. Definitions of Culture and Diversity

The definition of culture has long been a controversy and the term is used within many contexts. According to Merriam Webster Dictionary culture is understood as the customary beliefs, social forms, and material traits of a racial, religious, or social group and/or the integrated pattern of human knowledge, belief, and behavior that depends upon the capacity for learning and transmitting knowledge to succeeding generations [Merriam Webster Dictionary (1)]. Diversity is described as the condition of having or being composed of differing elements: variety; especially: the inclusion of different types of people (such as people of different races or cultures) in a group or organization programs intended to promote diversity in schools [Merriam Webster Dictionary (2)]. Stereotype: a set idea that people have about what someone or something is like, especially an idea that is wrong [Cambridge Dictionary]. We, as humans, seek information around our environment, the world that is both near and far. While doing that, it often happens that a widely held but fixed beliefs about a particular nationality, race, religion, ethnicity or any other grouping settles in the brain regardless that those might not always be an accurate way of adopting an opinion. This starts with a very common question but one that has a predetermining definition of our judgment: “Where are you from?” Once we get an answer to it, we draw a picture in our head of who they are, what should we expect and whether we want to continue the conversation. While culture is part of human personality, it may not always be the case, and may not be used as a reference to identify an individual. During a cross-cultural interaction, humans usually do not focus much on adapting to the host culture but feel the need to take pride in their native one. It is important to balance both preserving the familiar cultural identity and making effort of embracing new cultural logic for a successful intercultural conversation. Addressing the challenges of transcultural issues is itself challenging. Values comprise ideas about the things that are important in life and they guide the rest of the manifestations of culture.

Beliefs include basic concepts, such as what is right and what is wrong, how relationship shall start, continue or terminate, etiquette of conversation with familiar and unfamiliar people, whether at social events, campus or professional environment.

2. Globalization, Internalization and Culture

Global synergy is a messy process. Building multicultural teams takes longer, since more people are more up-front about more of the issues that must be dealt with if they are indeed to work together for the long term. Part of this comes from the particular problems each player is going through when dealing with the global context, which is new for most, even before they get down to dealing with each other's differences [Barnum, Gaster, 1991]. We are often not aware that our attitudes and the processes by which we reach decisions are influenced by our subconscious as well as our conscious minds. As a result, we may inadvertently take a position on a subject which is not so much a reflection of our own thoughtful processes, but more a reflection of the value systems on which we draw. Which have, in large measure, been inherited from our parents and the people with whom we grew up [Gately, Lessem, 1995]. Kilroy J. Oldster said: "We build a self-image from stored memories including a swarm of physical and social interactions, evocative emotions, and other associative experiences. Selfhood also comes from the language, symbols, and artifacts, which potent combinations create cultural beliefs. We build a self upon real as well as imaginary experiences. A person's rational and irrational beliefs forge a sense of self. The books that we read, the music we listen to, the films we watch, and what church or other social gatherings we attend constitute meaningful activities that congeal and work together to shape our sense of identity. Cultural determinants drive how we work, play, worship, and raise our children. Culture has its own sources of reinforcement that can influence members of society to adopt an interdependent, communal sense of self, or an independent, individualistic sense of self. Culture is not fate, but none of us is immune from the great octopus of culture; its tentacles touch us every direction that we turn. Our self-identity is subtly influenced by the prevailing political-social culture as well as affected by our perceived social status, economic or otherwise." [Oldster, 2016] When we all work diligently towards implementing diversity plans and ensuring that each individual feels liberated and accepted in the social, academic, professional setting, they experience a greater feeling of belongingness among themselves, free flow of ideas, variety of enriching perspectives, a collective burst of positive energy and many more. Diversity not only brings foreign and unknown cultures together but also is a platform for new and creative ideas, implementation techniques and is an added value to any development.

An increasing internationalization of campuses, companies, and communities shows that intercultural communication skills are in high need. Culture is a quality of society, not of an individual and it is acquired through the process of active socialization. Each culture is a unique set of characteristics dictating behavior in every aspect of our lives. Thus, culture can be compared to a moral law because it contains information about the society in which individuals find themselves. It provides rules about social roles, the structure of interpersonal relationships, etiquette and how everyday life should be arranged.

While it is obvious that culture is a system of particular beliefs, there are various systems too. According to Edward T. Hall who first used the term “intercultural communication” in his book, *The Silent Language*, and has been acknowledged to be the founder of the field of intercultural communication, states that culture is a guideline for social interaction, but it is only valid in the social context in which this program is internalized among its members; therefore, it is necessary to understand the other members of the global society and their program [Hall, 1976]. So that means global interconnectedness has become of greater need than ever before in the history of a mankind. We are all members of one single system of culture but we are members of a universal system of cultures as well.

In the beginning of 1990 international relations scholars began exploring culture’s role in conflict resolution and security studies. As intercultural communication scholars John Condon and Fathi Yousef noted, “We cannot separate culture from communication, for as soon as we start to talk about one we are almost inevitably talking about the other, too” [Condon, Fathi, 1975, p. 34].

Culture is primarily a vehicle for understanding and a tool for communicating with people. The certain aspects of culture that people can observe, listen to, or talk openly about represent the explicit side of culture. An awareness or mindfulness can play a positive role in enhancing relations and communication between people. However, there is also an implicit, unspoken side of culture that cannot be always positive. Aspects of culture include language, religion, nationality, ethnicity, values, customs, family and social structures, and so the differences are vast. Being part of a culture is learned, initially from family and friends, later from widening social surroundings. Whereas there are positive sides of cultures, the main problem for intercultural communication is prejudice, a judgment made on the basis of past experience rather than an evaluation of present circumstances. In fact, prejudice can be positive or negative, but practically it is associated with negative judgments and bias. Prejudice can also be a stereotype judgment made on the basis of communicated information rather than personal experience. The solution of dealing with prejudices can be conversation which is built through language.

Language is more than just a means of communication, language is a tool for empowerment. Since communication and culture are acquired simultaneously, language can be considered the key to a culture. Every language deeply rooted in a particular culture conveys a unique representation of the world. Good argumentative points and diplomatic techniques are useless without the ability to communicate them. As there are strong differences in verbal and nonverbal communication across cultures and subcultures, language can also be an obstacle to a successful diplomatic process because of possible cross-cultural misinterpretations. As such, language skills are one of the most important tools. Edward T. Hall also differentiates the methods of communication between high and low context cultures. High context communication implies the transfer of frequent unspoken messages within communication; communication occurs through allusion, making the context of what is said as important as the content [Haslett, 1989]. Conversely, low context communication contains the exchange of all intended information through speaking; hardly anything is implied apart from what is explicitly spoken. Even if the negotiating partners use the same language, it can be difficult or even impossible to communicate the meaning and relevance of a certain word. Some words have a completely different meaning depending on the origin of the culture in which they are used; hence, it may be insufficient to simply translate them from one language to another. This different use of language can cause misunderstandings, leading to a communication gap. Shah identifies the following six stumbling blocks in cross-cultural communications and understanding [Shah, 2004]:

1. *assumption of similarities*: this might temporarily ease the discomfort of “walking on thin ice”, but it can be seriously misleading,
2. *language differences*: communication competence studies insist that knowing the language is not enough unless and until it is supported by cultural knowledge,
3. *nonverbal misinterpretations*: nonverbal messages and signals are located within cultures and patterns of behavior and, therefore, cannot be learned through mere language acquisition (e.g. a nodding implies “Yes” in many cultures but means “No” in parts of Greece),
4. *preconceptions and stereotypes*: intercultural communication takes place in the backdrop of preconceptions and stereotypes deriving from initial contacts with other cultures,
5. *tendency to evaluate*: evaluations are made in comparison with the known value systems and patterns of behavior, derived from one’s own cultural background,
6. *high anxiety*: In intercultural interaction, the participants might experience both stress and anxiety at the prospect of dealing with the “unknown.” [Shah, 2004]

Harvard Professor Akira Iriye's idea that "all international relations are intercultural relations" may be similar to the thought that all international communication is intercultural communication [Iriye, 1997]. While culture was initially seen as the inevitable cause of conflict, it is also important to note that culture may also be a valuable tool for preventing and mitigating conflict. As different cultural groups communicate differently, the culture of people who are interacting within the same setting is important to consider. Therefore, the probability of mistakes and misunderstandings increases when the interaction is cross-national [Russell, 1990]. Cultural communication in general tends to focus on understanding communication within one culture from the insiders' points of view [Gudykunst, Mody, 2002]. Thus, understanding cross-cultural communication should be a prerequisite to understanding intercultural communication and how successful cultural diversity functions.

Not only public actors, but also private citizens, everyone who is interacting in a multicultural environment should and can acquire a communication technique where words are chosen with care. Once one finds themselves within other cultural settings very different from their own, it immediately becomes a greater challenge. We may easily offend someone without even knowing it, just from using the inappropriate words. In this sense it is worthwhile to study local customs in advance. Being culturally aware does not mean not letting your opinions known, it means evaluating a situation, waiting for the right moment before speaking or acting. The modern world has become so mixed and interacted that it requires every single human being to be diplomatic and adjust to change and diversity. The interconnectedness of people is a clear proof to embracing things that are different from our usual scope of vision. Not only global leaders should encourage the values of the universally acceptable norms of international comity and courtesy, but we, as individuals shall also contribute, even in the smallest way, into building respect and trust among cultures, fostering peaceful societies and cooperating for success.

At the most fundamental level, each individual's interpretation of the world is different, but according to the groups to which people belong (national, regional, local, and professional) they share some interpretations with others [Russell, 1990]. Culture is a system of beliefs and values shared by a particular group of people, and thus, skills described below, which constitute cultural fluency, are essential to become successful global players:

1. *tolerance of ambiguity* (the ability to accept lack of clarity and to be able to deal with ambiguous situations constructively),
2. *behavior flexibility* (the ability to adapt own behavior to different requirements/situations),

3. *knowledge discovery* (the ability to acquire new knowledge in real-time communication),
4. *communicative awareness* (the ability to use communicative conventions of people from other cultural backgrounds and to modify own forms of expression correspondingly),
5. *respect for otherness* (curiosity and openness, as well as a readiness to suspend disbelief about other cultures and belief about own cultures),
6. *empathy* (the ability to understand intuitively what other people think and how they feel in given situations).

When people of various cultures interact, cultural fluency is the appropriate application of respect, empathy, interest, healthy level of curiosity, moderate openness, the willingness to suspend judgment, tolerance for ambiguity, and a little bit of sense of humor.

CONCLUSION

The possible solutions for a successful intercultural interaction, in my view, whether at workplace, academic community or social events, require three steps:

1. avoiding the human categorization based on combinations of physical traits and external looks, for e.g. assuming an African looking person to be from Ghana, Asian looking person to be from China, or Hispanic looking person to be from Mexico. Labeling someone because of their face, eye shape or skin color creates an atmosphere of imitating power over the person who is being assumed to be from a specific race. Communication is about respect and equality,
2. when meeting new person or people or entering a foreign culture, it is worth being open minded, meaning to acknowledge that our previous information about them might mislead and interrupt the process of authentic interaction. While it is unavoidable to have some sort of idea about someone from country A, because we heard some story or read the news about it, that cannot be the final judgment,
3. remembering that some people may be a part of one culture in name but not necessarily in spirit, due to many reasons, such as different upbringing in childhood, distant travels, being born in mixed family, etc. It is important to understand that sometimes an individual is not a product of the culture they are from. Being a representative of culture B does not stamp a person with the widely common known values or behavior of that culture if the person in question identifies himself or herself as an entity separate from and not influenced by it.

It is my utmost belief that cultural diversity works if each of us every day puts drop into the ocean by making effort to lessen our generalization about others. We shall all have stereotypes and general knowledge about specific cultures, of which I am convinced that some are true, however, we should never allow ourselves to make culturally inappropriate statements that might offend another person or feel incomplete about themselves just because of their external features. Within the context of understanding intercultural sensitivity and awareness, we can build a better, kinder and safer world.

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EU POLITICAL AND LEGAL KEYWORD: SOVEREIGNTY

PRAWNO-POLITYCZNE SŁOWO KLUCZOWE UNII EUROPEJSKIEJ: SUWERENNOŚĆ

Summary

The goal of this paper is to briefly analyse the historical movements that led to the emergence and the development of the concept of sovereignty and, secondly, to spread some light on the conceptual mis-asma which accompanied the development of such protean construct up to the present day. Finally, this paper will take in exam the status of sovereignty in relation to the current European political landscape, namely the European Union.

Keywords

sovereignty, European Union

Streszczenie

Celem artykułu jest analiza działań, które doprowadziły do powstania i rozwoju fundamentalnej kategorii polityczno-prawnej, jaką jest suwerenność, a także naświetlenie genezy i ewolucji istniejącego w społeczeństwie nastawienia wobec retoryki suwerenności. W artykule przedstawiono także obecny status tej konstrukcji w Unii Europejskiej.

Słowa kluczowe

suwerenność, Unia Europejska

INTRODUCTION

“Naming the mystical foundation of authority or the liminal sphere of indistinction between might and right, sovereignty appears as the very guarantor of the unstable union of politics and law – the afterlife of the original coup de droit that grounds every legal order.”

[Kalmo, Skinner, 2011, pp. 3–4]

The current political horizon, especially when dealing with a *sui-generis* organization as the European Union, requires a further thought for what concerns the conceptions

of political realities, supposed to have a unitarian character on the one hand and, on the other, to take into account the diversity of the subjects constituting those realities. Therefore, the relation between the conceptual framework and the form of government is not only contingent but essential and unavoidable [Duso, 2015]. Since the birth of the modern state around the 15th century, the political debates in this regard have always revolved around one fundamental concept: *the sovereignty*. The sovereignty is not a new notion and has a long tradition. According to Richard Bellamy sovereignty originally appeared as a result of the supposed need for some ultimate adjudicator of all conflict in a world where consensual agreement on the right and the good cannot be counted on. Therefore, the author concludes, sovereignty means the possession of “supreme authority” [Bellamy, 2003, p. 171]. Such definition is commonly accepted by most scholars, who refer to it as a power over which there is no higher authority within a given territory. This is often, for instance, the sense given by “Europhobic” populist political movements when they call for a return to national sovereignty, of which European Union is said to have deprived their state [La Fondation, 2016]. Conversely, this is exactly the interpretation that, as early as 1951, Maritain strongly deplored in his work *Man and the State* because of its incompatibility with the ideas of international law, democracy and pluralism:

“It is my contention that political philosophy must get rid of the word, as well as the concept, of Sovereignty: not because it is an antiquated concept [...] and creates insuperable difficulties and theoretical entanglements in the field of international law; but because [...] this concept is intrinsically wrong and bound to mislead us if we keep on using it – assuming that it has been too long and too largely accepted to be permissibly rejected, and unaware of the false connotations that are inherent in it.”

[Maritain, 1951, pp. 29–30]

Later, we shall look into this matter in a more detailed way, for now suffice it to say that there is no single uniform definition of sovereignty. The vitality and the mutability of this term have always been apparent as much as the misconceptions that surround it: the idea of sovereignty has been and is still widely used – and not always in the same way – by a whole series of figures connected to the international political arena, which have been providing it with a long list of different meanings, though often overlapping. For some sovereignty could represent the real or ritualized monarch or the absolute power, it could mean political legitimacy or political authority; for others, it could symbolize national independence as well as the constitutional order; for still others, it could be the source of all law, international recognition, legal immunities or basic governance competencies [Nagan, Hammer, 2004]. Recently, there are also those who, “seeking to ex-

plain the significance of contemporary trends, especially those paraded under the labels of globalization, flexibilization and the emergence of multi-level governance, have argued that we [are] now living in an era of post-sovereignty” [Loughlin, 2003, p. 55–56], where governments, bound by domestic and international human rights charters can no longer claim to be entitled to do whatever they wish in the name of their sovereign powers [Bellamy, 2003].

Whatever side one may choose one thing is for sure, though: after centuries, the idea of sovereignty, due to its ambiguity and versatility, is still leading to misunderstandings which make it today, as in the past, an easy target for distortion, instrumentalization and political infighting. For this reason – but not only – some people argue that we should get rid of an outdated and elusive concept such as sovereignty. The author of this work agrees with those scholars who believe that sovereignty is still an indispensable tool for understanding the modern political and legal order. Whatever meaning one could bestow on such concept, sovereignty remains “the very relational interface between law and politics, that which both separates these domains *and* binds them together” [Bartelson, 2006, p. 469]. Perhaps, the sole fact that we are debating about it could mean that sovereignty “still has plenty to say”. First of all, the objective of this work is to briefly analyse the historical movements that led to the emergence and the development of the concept of sovereignty and, secondly, to spread some light on the conceptual miasma which accompanied the development of such protean construct up to the present day. Finally, this work will take in exam the status of sovereignty in relation to the current European political landscape, namely the European Union.

1. The Emergence of Sovereignty

“The right is produced by the power insofar as the power, in turn, arose from the right.”

[Bobbio 1999, p. 189]

The Peace of Westphalia in 1648 symbolically marked the end of the long transition from the Middle Ages to a world dominated by independent sovereign “nation-states”. Tremendous political and religious conflicts have been ravaging the European continent for many years now with monarchs seeking to defeat rival contenders internally and to break free from the claims of the Papacy to rule in the name of Christian universalism [Newman,1996]. Particularly in France, the king fiercely strove to end the wars of religion that swept the nation throughout the last century and to make itself absolute ruler by beginning to oppose or ignore the rights of the courts. In an effort to deliver a theoretical

basis for justifying the actions of the French monarchy, the French philosopher Jean Bodin claimed that only one supreme *sovereign* power – which is to rest with the king of course – able to rise above the warring factions, could have forced them into a secular order under which they would exist side by side. In the Middle Ages, many “sovereigns” coexisted on the same territory: in this sense, the king was the primary sovereign, but not the only one, since he was not superior to the other holders of powers in all, or even most, regards [Grimm, 2015]. Yet, according to Bodin, the medieval notions of a segmented society were no longer able to give an account of the new political reality, so that a paradigm shift was required in order to keep up with the changing times. Unlike in the past, the Bodin’s *sovereignty* was to be indivisible: possession and exercise of it had to remain in one place, in the hands of the king [Grimm, 2001]. In Bodin’s mind sovereignty was to be cleared of justifications as ancient privileges or Christian universalism, above any other human law and source of human law, free from external and internal constraints and located in the state [Newman, 1996]. The supremacy of this power, whose holder was accountable only to God and to the natural law, meant it was independent of the subjects’ consent to such an extent that misrule would not justify disobedience or opposition [Kurtulus, 2005]. By the way, the ruler was entrusted with such authority not merely to end the war but also to create and implement a new, peaceful order within the territory of the state by means of his legislative power, which represented, for the French philosopher, the principal mark of sovereignty [Grimm, 2015]. The emergence of such concept, fully theorized by Bodin in *Les Six Livres de la République* (1576), not only provided the European monarchies with a very powerful means of legitimation to their takeovers, but also opened a debate meant to last until today.

Some decades later, the English philosopher Thomas Hobbes, writing against a similar background of turmoil, arrived at similar conclusions. In his view, in ancient times people established sovereign authority through a contract in which they transferred all of their rights to the *Leviathan*, the abstract notion of the state. As Bodin, Hobbes imagined only one ruler at the head of the Leviathan [Kurtulus, 2005] and also agreed with the French philosopher on the definition of sovereignty as a supreme indivisible authority. For Hobbes, the adjective “supreme” meant that the commands emanating from the will of the holder of sovereignty, along with the obligation to obey it, are absolute [Stanford Encyclopedia, 2016]. Bodin and Hobbes theories of sovereignty have been grouped together under the name of *doctrines of state sovereignty* [Newman, 1996, p. 6] or *ruler sovereignty* [Kurtulus, 2005, p. 42]. Some scholars, as will be seen, gave them a different name, *Westphalian sovereignty*, after the historical moment regarded as the spark that started the “sovereign fire”. Despite such doctrines were theoretically not meant to lead to “absolutism”, their lack of “democratic guarantees” saw to it that mo-

narchical absolutism developed at the end of the 17th century with *state sovereignty* as justification [Newman, 1996].

It is well known how fast and radically the political systems have been changing over the course of history: the concept of sovereignty could not remain unaffected [Grimm, 2015]. Around one hundred years after the publication of Hobbes' *Leviathan* in 1651, the doctrine of *ruler sovereignty* was rejected by Jean-Jacques Rousseau. The French philosopher was in complete disagreement with the Hobbesian idea thereby, due to the nasty and brutish man's nature, the people could have not been possessed the sovereign power; he claimed instead that the body of people should not merely enthrone the sovereign, but be themselves sovereign [Grimm]. Rousseau's *doctrine of popular sovereignty* did not only challenge *state sovereignty* but also raised one important question about power, that is, whose hands are to wield it. Michael Newman makes an interesting point in this regard. He claims that *popular sovereignty* could paradoxically end up strengthening a state, which for example claimed to embody the popular will. In his view, this idea had been distorted and adopted by Fascist, Stalinist – *doctrine of popular state sovereignty* – and even Nazi regimes – *doctrine of national sovereignty*. The former were built upon the belief that the unity between state and people is so complete that no separate institutions are necessary to represent the people, while the latter was based on the Hitler's conviction of embodying the *Volk* will [Newman, 1996, p.7].

That was just one example of the well-established ambiguous character of the concept of sovereignty, which, at the beginning of the 19th century landed again on the shores of Great Britain but under another name: *legal sovereignty*. Its major theorist John Austin, similarly to Rousseau, aimed at investigating firstly on the power allocation. Yet, unlike Rousseau's one, Austin's conception of sovereignty is close to the Hobbesian one. Sovereignty is described by Austin as absolute, indivisible and unlimited. According to him, such a power must be held by a sovereign, defined as a human superior habitually obeyed by society without owing obedience to any other authority, who implements laws by means of commands. Such commands are binding because the sovereign has the power to enforce penalties, but no external body has the ability to impose penalties on the sovereign authority. Thus, Austin believed international law does not exist because there was no sovereign to enforce it [Newman, 1996]. The *doctrine of legal sovereignty* on the one hand was enormously influential, both as a justification of state power and as basis for opposition to supranational notions. On the other, it has been recently greeted with deep scepticism by some scholars mainly because of one reason. They found it impossible to apply such doctrine to existing states. It is in fact to identify a sovereign in Austin's sense of the word a difficulty Austin himself experienced, when he was forced

to describe the British sovereign awkwardly as the combination of the King, the House of Lords, and all the electors of the House of Commons [Stanford, 2018].

Broadly speaking, for many centuries the system's basis of what is called classical sovereignty, namely states as the sole subjects of international law secured by the prohibition on intervention with external independence and internal supreme authority remained quite stable [Grimm, 2015]. Since the end of the 19th century, efforts were initiated to ensure permanent peace among states in the form of treaties as, for instance, the multilateral Convention for the Pacific Settlement of International Disputes of 1899 and the Convention Respecting the Laws and Customs of War on Land signed in The Hague in 1907. The history reveals that those efforts have not been effective, considering that in 1914 the First World War broke out.

2. The Crisis of Classical Sovereignty

“I feel about globalization a lot like I feel about the dawn. Generally speaking, I think it is a good thing that the sun comes up every morning. It does more good than harm. But even if I didn't much care for the dawn there isn't much I could do about it.”

[Friedman, 1999, p. XVIII]

As has been said, during the eighteenth and nineteenth centuries Bodin's definition of sovereignty as the absolute power of a state was interpreted in terms of unlimited freedom and independence so that was widely seen as justifying the use of absolute power [Ferreira-Snyman, 2006]. According to this notion of sovereignty the right to engage in war was seen as one of the key elements of sovereignty and no binding legal rules obliging states to keep the peace were accepted. This tendency first led to the rise of the imperialism and then to the First World War. As a result of the horrors of war, anti-sovereign doctrines emerged together with a more positive attitude towards international relations to the extent that it became apparent that the classical approach to sovereignty as absolute and unlimited authority constituted a threat to international peace [Ferreira-Snyman, 2006]. Also, in debates among liberal intellectuals and professionals, since after the end of hostilities, sovereignty was predominantly seen through its dark side, as a functionally inept and morally corrupt form of absolutism and power politics [Koskenniemi, 2011]: theorists and scholars even started to doubt that *sovereignty* was still the master concept that needed to be analyzed. Moreover, the establishment by the League of Nations of the Permanent Court of International Justice in 1922 brought into being a legal authority whose judgments were capable – at least theoretically – of overriding

the jurisdictions of individual states in many areas over which they previously enjoyed an inviolable sovereignty [Skinner, 2011, p. 43]. Therefore, although sovereignty was traditionally conceived as the supreme authority of the state, it was clear that it was in “the process of evolving from an absolute concept of unlimited freedom and independence to a relative concept where the freedom and independence of states are limited both by the freedom of other states and by international law” [Ferreira-Snyman, 2006]. A growing body of scholars began to suggest that such definition of power had simply “had its day”. In the same period, a group of political scientists made an assault on the traditional doctrine of *sovereignty* by putting forward the theory of *pluralism*. In their view, sovereignty was exercised by various political, economic, social and religious groups that dominate the government of each state and does not reside in any particular place but shifts constantly from one group to another [Encyclopedia Britannica, 2006].

Nevertheless, the changes in the first half of the century did not demolish the foundations of the classical international legal order considering that there was still no possibility of forcing a state to act against its will or to cease acting [Grimm, 2015]. Only due to the Second World War the bounds of sovereignty had been finally crossed. After the traumatic and devastating experiences of a conflict where almost 55 million people died and the Holocaust, meaningful legal and institutional circumscriptions of sovereignty arose with the aim of considerably abridging the sovereign rights. First of all, the formation of the United Nations in 1945 marked a turning point in this regard. In the *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations* of 1970 was declared that all States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social political or other nature. In particular, sovereign equality includes the following elements [Ferreira-Snyman, 2006]:

1. states are juridically equal,
2. each State enjoys the rights inherent in full sovereignty,
3. each State has the duty to respect the personality of other States,
4. the territorial integrity and political independence of the State are inviolable,
5. each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

Secondly, the Charter of United Nations not only limits the sovereignty of states, by subjecting them to international law, in respect of their relations with other states, but also, especially with regard to the protection of human rights, with regard to its subjects within its own territory [Ferreira-Snyman, 2006]. In 1948, the very large majority of states signed the *Universal Declaration of Human Rights* consisting of over 30 separate rights

of individuals. As a matter of fact, the document was not legally binding, which means that could not affect states' sovereignty; yet it was a first step towards bringing states and their universal obligations regarding internal affairs close together. Not long after, in 1950, the *European Convention for the Protection of Human Rights* was established with express authority to override the local jurisdictions. As Grimm clearly explains:

“The European Convention on Human Rights departs from traditional concepts of sovereignty in two ways. First, it grants each member state the right to take another country's human rights violations before the court and thus to intervene in its internal affairs. Second, it not only pertains to relations between states but also allows individuals to bring proceedings against member states for violations of the rights protected in the convention.”

[Grimm, 2015, p. 88]

There were certain generally recognized interests, as human rights for instance, that cannot be addressed independently, so that an ever-increasing trend of cooperation and interdependence started developing between states. More recently, due to *globalization*, also issues such as economic distribution, environmental protection, the rise of multinational corporations, the spiraling growth of international organizations and security came to be considered as “essentially global” and therefore were meant to be managed outside the old paradigm of classical sovereignty. This is not intended to be an *apologia* for globalization; what matters here is that whatever *globalization* may mean, at least, it signifies the informal government of an increasing number of people and things outside the anachronistic structures of sovereign statehood [Koskeniemi, 2011]. All these trends confirmed that sovereignty was no longer absolute, but should rather be understood as a relative and limited concept.

Finally, what one might call the “knockout blow” to the traditional concept of state sovereignty was delivered by the European integration process. Yet, as far as the author of this work is concerned, this does not mean the demise of the sovereignty. If anything, this is the evidence that sovereign states, at least in Europe, are no longer the sole rulers on their territory. It is apparent that the “state” remains the basic units of the international order and did not disappear to be replaced by “a variety of powers, distributed among several levels and holders, which can no longer be meaningfully bundled into a concept of sovereignty” [Grimm, 2015, p. 102]. It goes without saying that both the state and sovereignty have undergone major changes during the last eighty years. According to Grimm, nowadays, especially as regards foreign affairs, “no state is sovereign in the sense in which states were sovereign in the nineteenth and even the first half of the twentieth century” [Grimm, 2015, p. 91]. Troper, in the same spirit, came to the conclu-

sion that, since the second half of the 20th century, the “state” is becoming weaker and weaker as for its effective power:

“The development within the state of powerful economic or social forces; the decline of public services and the increasing privatization of public corporations; the loss of control of the economy by the state and domination by the market; the fact that, in several countries, many important activities are regulated not by the state but by independent agencies; the developing role of minorities; and the dramatic changes that they see in the legal system because of such phenomena as the growing importance of international organizations or legal pluralism [...] [are] the symptoms of the limited power of the state.”

[Troper, 2011, p.132]

All these factors, together with the new sensibility for human rights, the willingness to avoid genocide and disasters as the Holocaust and the two World Wars for the future, the rise of an international criminal court and of a supranational entity – the European Union – that assumes power of governance over economic – and sometime in the future, maybe, military affairs – the state’s authority had been drastically curtailed [Stanford, 2003].

The classical notion of sovereignty could no longer fit the scenario. Nevertheless, precisely because the object of sovereignty, namely the “state”, is still there – and, in my opinion, will continue to be there for very much longer – it would be therefore unwise indeed to take the notion of sovereignty out of the picture. Certainly, with the creation of a *sui generis* institution such as the European Union, which someone defines as “something between a supranational organization and a federal state” a real challenge has been issued to those trying to depict it in terms of sovereignty. The debate about such notion and its application to the European situation has been around a long time and not even close to the end. Given that it would be impossible to give room to the entire literature on this matter, I will take in exam two opposing theories I deem paradigmatic as for the question of sovereignty, while in the final part I will deal with the European Union.

3. The Fate of Sovereignty

“[T]he understanding of matters of public law was beset with immense confusion. The location of power was the most intricate question of all. It touched upon the very existence of political power. Sovereignty was brought forth as the regulative principle of what would otherwise have been a chaos of authorities, powers, magistrates, etc.”

[Baranger, 2011, p. 50]

The nature of the notion of sovereignty changed very much over time along with the customs and practices of nation-states and international systems [Jackson, 2003]. Nonetheless, although much criticized, sovereignty is still central to most thinking about international relations and particularly international law. Most of authors, in fact, continue to hold onto it by either abandoning the element of indivisibility in favor of a pooled, shared, divided, split or partial sovereignty to make it fit to the newly emerging international order, as well as to the special case of the European Union, or by developing an updated version of it [Grimm, 2015]. Conversely, more and more authors are willing to get rid of this concept for many reasons: some say it has lost its object and hence is no longer helpful in explaining the current situation, others claim that the vagueness which surrounds it is a source of dangerous misunderstandings and instrumentalization, to a point where abandoning sovereignty seems advisable [Grimm, 2015].

One of the most interesting criticism of the concept of sovereignty is contained in the book *Democracy, Sovereignty and the European Union* of Michael Newman². The author, before revealing his own point of view, analyzes some arguments against sovereignty. In his view, those who believe that sovereignty “has outlived its purpose and should now be confined to the *dustbin of history*” base their position on two pillars. Firstly, they affirm that “sovereignty” is a *myth* which bears no correspondence with reality and aim to prove it with empirical evidence; secondly, stressing out the normative aspect of sovereignty, they hold that the doctrine is *dangerous*. The supporters of the *sovereignty as a myth* usually dispute the claims thereby “the state is rightfully ascendant within the territory” and that “it is not answerable to external forces” – namely, *state sovereignty* and *legal sovereignty*. *State sovereignty* rebuttal relies on the fact that “in no society does the state actually hold a monopoly of power, and that in liberal-democracies some degree of dispersion of power is institutionalized and explicitly advocated” [Newman, 1996, p. 9]. *Legal sovereignty* review, instead, is based on the premise that states’ powers are strongly curtailed by international forces in a more and more interconnected world. Since the sovereignty is no longer able to describe the reality, what is it for?

The most decisive consideration, however, is the normative one, which sees *sovereignty as a danger*. It is dangerous both internally inasmuch as “the so-called sovereign state will seek to assume absolutist powers even within a liberal-democracy” and externally because “sovereignty (particularly when reinforced by nationalism) it legitimizes aggression, expansion, and disregard for others in the name of a single interest defined by the state” [Newman, 1996, p. 10]. Very often such interest does not coincide with the urgent world problems, so that sovereignty ends up diverting attention from the proper solutions. The “alternative values” promoted by the detractors of sovereignty “may be that domestic power should be divided, that the needs of world community should be

recognized or, more specifically, that the demands of the EU should supersede those of the nation-state” [Newman, 1996, p. 10]. For Newman, one of the ways in which defenders of sovereignty may respond is by asserting that sovereignty exists because the UN recognizes the existence of sovereign states. At first sight it could seem a very weak argument; yet, since the state remains the dominant form of political organization today and given that the existence of a state means that at least some people within a territory area possess some power, Newman concludes that it cannot be assumed that “the possession of *sovereignty* (in the sense of recognition) is to possess an empty shell without significant content” [Newman, 1996, p. 12]. Either way, the author does not aim at “sweeping out” the notion of sovereignty: in his view, it is simply *unhelpful*.

In order to demonstrate his thesis, Newman starts from the very beginning, thus by trying to give a definition to the concept of *sovereignty*. While retracing its steps over the course of history, the author realizes that there is a host of different uses of term sovereignty and he comes to the conclusion that sovereignty should be at least acknowledged as a very equivocal word. *Inter alia*, he mentions: *state sovereignty*, *legal sovereignty*, *popular sovereignty*, *national sovereignty*, *divided and shared sovereignty* – and the list is much longer. In his view, because of all these *nuances* of meaning, “if someone refers to *sovereignty*, without further clarification, we cannot be sure what s/he is talking about”. If we take, for example, the view, according to which sovereignty is associated with international recognition, Newman says that, even if in this case it could seem valuable, given that “all states that are recognized as such are sovereign and all bodies that are sovereign are recognized as states”, thinking of sovereignty as an attribute of statehood does not seem to be so useful [Newman, 1996, pp. 9–10].

Also, sovereignty could – and is – used as a doctrine of *legitimation*, for example in the context of the European Union, by right-wing nationalists who, appealing to an alleged threat to sovereignty – and hence to democracy – aim at mustering votes. The blurring hovering over the concept of sovereignty, in fact, “reinforce[s] its legitimating functions” to such an extent that precisely “by failing to specify the usage, opinions may be mobilized on bogus grounds as if sovereignty constitutes some holy order which is to be preserved” [Newman, 1996, pp. 12–14]. Newman, by arguing it, did not want to take a political stand; referring to the European Union debate, in fact, he writes:

“It is possible to feel great sympathy with Norwegian opponent of EU, who feared that membership could threaten their democracy and high welfare expenditure. But it would be preferable to conduct the argument in these terms than to invoke sovereignty as a justification.”

[Newman, 1996, p. 14]

To recap, Newman's reasoning has taken the first steps relying on the classic criticisms of the concept of sovereignty to arrive at the conclusion that there is no benefit in using this term. The latter, as a matter of fact, it appears to be quite *unhelpful* on the grounds that:

“There is not a single usage of the term [among those mentioned above] which cannot be expressed more clearly in other ways. If we want to talk of state sovereignty we can examine the specific justification for state power over society; if we want to talk of popular sovereignty, we can more usefully discuss this in terms of ‘democracy’; if we want to consider divided sovereignty or shared sovereignty, we can understand these more fully by analyzing the kinds of constitutional/institutional relationships within states [...]. It diminishes clarity rather than adding [...] it.”

[Newman, 1996, pp. 13–14]

It would be counterproductive, or even illogical, to insist on making use of a concept that, firstly, is not able to describe the current political situation, secondly, is a dangerous means of political legitimization and propaganda, and, thirdly, is the cause of misinterpretations, misunderstandings and mistakes.

For what concerns those who “still believe” in the value of sovereignty as a useful and explanatory term, either political or legal or both, Neil Walker is a leading voice. In the opening chapter of the book titled *Sovereignty in Transition* (2003), of which he is editor and co-author, he develops a completely different view concerning sovereignty as compared to Newman. He first of all gives his own definition of sovereignty, which it is:

“The discursive form in which a claim concerning the existence and character of a supreme ordering power for a particular polity is expressed, which supreme ordering power purports to establish and sustain the identity and status of the particular polity qua polity and to provide a continuing source and vehicle of ultimate authority for the juridical order of that polity”.

[Walker, 2003, p. 6]

As we will see later, according to Walker, such definition would wipe out some of the criticisms which have been brought against sovereignty. After that the author briefly presents his own vision as for the history of such troubled notion, which in his view consists of two phases:

1. the Westphalian phase,
2. the post-Westphalian phase.

The Westphalian phase describes the international order after 1648 (Peace of Westphalia). Such order was backed by two complementary frameworks of law: *constitutional law*, connected to the internal government of sovereign states, and *international law*, dealing with the relations between those states. Yet, according to Walker, “despite this dual legal structure the Westphalian order was characterized by a one-dimensional configuration of legal authority”, given that “no claims to authority other than by or on behalf of the state were seriously countenanced”. In this context, sovereignty was as a very successful term used “to explain and to justify the world”. It was both understood as “a discursive claim” and, as well as “an institutional fact within that world” [Walker, 2003, p. 9].

On the other hand, with the Post-Westphalian phase, “while sovereignty clearly continues to form part of the object-language, it is no longer so confidently conceived of as part of the meta-language of explanation and political imagination” [Walker, 2003, p. 10]. This is to say that, although the term of sovereignty is still being widely used does not mean it is still able to play a role nowadays. Walker agrees with the argument thereby the modification of the institution of the state throughout history forced the concept sovereignty to change accordingly. It is precisely the premise that, in a world where “many circuits of power operate beyond the direct control of the sovereign state”, where “we see the growth of polities which are not states but which rival states in terms of legal and political authority – paradigmatically the EU, but also international organisations such as the Council of Europe, UN, WTO – and where “globalization of economic organization, transnational commerce, culture and travel, and the new communications media” effectively challenge the political capacity of the state, to the point that ‘sovereignty figures lower and lower in the register of explanatory variables which may be invoked to make sense of that world’, well it is this premise which has led many observers to “reject or marginalize sovereignty as irrelevant” [Walker, 2003, pp. 9–10].

According to Walker, those who insist on the irrelevance of such notion, base their theories on mistaken assumptions. First of all, they see sovereignty as representing “the actual capacity of a polity to retain full internal control and external independence”, that “due to globalising trends, less and less corresponds to the idea of a sovereign state in *reality*” [Walker, 2003, p.7]. Having in mind his own definition of sovereignty, Walker answers to this criticism claiming that, as a discursive form, the validity of sovereignty:

“Depends upon its plausibility and its acceptance as a way of knowing and ordering the world, which in turn depends upon its status as an ‘institutional fact’ a fact whose authenticity and credibility depends upon the internalisation by key actors of a complex of rules and expectations which support and subscribe to the sovereign claim.”

[Walker, 2003, p. 7].

Secondly, they detractors of sovereignty believe that nowadays “it is rivalled in intensity by other forms of power” – for instance, economic power – to such an extent that “its very distinguishing characteristic, and so its very conceptual relevance, fades and becomes peripheral” [Walker, 2003, p. 6]. For Walker:

“This makes no more sense than to assert that the continuing relevance of the concept of law itself, namely its claim to provide an encompassing framework of normative order, depends upon its capacity to dominate and subsume all other forms of normative order.”

[Walker, 2003, p. 6]

However, rejecting the allegations against sovereignty is not enough if our goal is that of attesting the actual validity of the term. Walker is aware that if we really want to maintain a weighty concept such as sovereignty we have to rephrase it in a new and suitable way. To draw a line between the past and the present, Walker renamed the term *late sovereignty*. In order to “convince the audience” of his intuition, he explains this new definition in detail. He has chosen *late sovereignty*, because, first of all:

“Suggests fundamental continuity [...], that the basic conceptual apparatus of sovereignty can be adapted to understand the new order. Secondly, it suggests a distinctive phase in the discursive career of the term. That just as there are continuities in the meaning of sovereignty, there are also significant changes. Thirdly, it suggests irreversibility, that there is no way back to the world of early sovereignty and the one-dimensional system of states which it represented. Fourthly, it suggests transformative potential, that sovereignty has entered a final stage, that its capacity to represent the world of political authority is being tested to the limits, and even, possibly, that in that challenge there may be a transformation into an order of authority where sovereignty is of diminishing value, and where its continuing use both in the object-language of constitutional representation and in the meta-language of explanation and normative projection is tested to the limit.”

[Walker, 2003, p. 19]

In the last part of the argumentation, the author goes even beyond suggesting that *late sovereignty* “contains the seeds of its own transformation”. Taking into account the European situation, characterized by “endemic boundary clashes” between states and no state institutions and by “the proliferation of those putative polities”, the system, along with its understanding, may change in the future. For Walker, this will not cause the demise of the sovereign polity, considering that they have always been able to adjust

to a transforming environment; in his view, it is simply not possible that those actually existing polities might one day “re-imagine themselves out of existence, and out of power”. Instead such change could envisage a brand new “order of relations between and amongst polities and putative polities, a new and enlarged zone of boundary politics, and a new set of approaches to negotiating these boundaries” [Walker, 2003, pp. 27–28]. We have no way of knowing how the situation will actually evolve, but, certainly, by way of conclusion, we can safely assume that the author is not willing to put sovereignty aside, since it remains a valuable “framework within our explanatory model”, which “heavily or lightly, directly or indirectly [...] might impinge in any particular place at any particular time” [Walker, 2003, p. 30].

4. European Union and Sovereignty

“For the first time, an international assembly would be more than a consultative organ; the parliaments themselves, having surrendered a fraction of their sovereignty, would regain that sovereignty, through its common exercise.”

[Robert Schuman quoted by Dedman, 2009, p. 82]

The classical concept of absolute sovereignty is absent within the European Community. Therefore, the question is: what is in its place? Some said that what we have in the European Union is partial, split, shared or pooled sovereignty; others tried to re-conceptualized the concept to adjust it to the new reality – as Walker did with the notion of *late sovereignty*; others again prefer to ignore it, as for instance Newman, or to put in its place something new. This is the case of Neil MacCormick and its *post-sovereignty*. MacCormick has compared the pooling of sovereignty to a loss of virginity, thereby something is lost without anyone else gaining it. Apparently, MacCormick is not fond of such “sovereignty sharing system”: in his view, by dint of “scattering around” their own power, member states are no longer in possession of ultimate power over their own internal affairs, no less [MacCormick, 1999, p. 132]. Lindhal, *au contraire*, believes that the diffusion of political power which is going on in Europe represents the realization of democracy. He further claims that we should abandon certain “crypto-Europhobic” approaches as regards sovereignty [Lindhal, 2003]. Another harsh and interesting criticism delivered to those who thumb their nose at the political and legal consequences which European Union has brought about is that of Marek Dabrowski who writes:

“The European Union and its institutions are often criticized for their supposed ineffectiveness, slowness in responding to various challenges, lack of transparency in decision making and lack of democratic legitimacy. All those who levy such criticisms should remember, however, that many of the weaknesses of the EU institutional setting arise from its voluntary character and the reluctance of EU countries to transfer more powers to the Union. Nevertheless, it is in the interest of all member states to have an effectively functioning Union, which will be able to deliver European public goods to their citizens. Therefore, the member states should be ready to repair the EU’s architecture even at the cost of sharing more sovereignty.”

[Dabrowski, 2017]

By now, for sure, we came to understand that it is mainly due to the European Union that the question of sovereignty has been posed in a new way. Apart from all these debates, it is true that, at the beginning, the European Union was supposed to be an international agreement between sovereign states and nothing more. However, history reveals that, in concluding the treaties, the member states deliberately transferred sovereignty rights to the Union, and the latter now exercises in its own name [Grimm, 2015]. At this stage, as Marlene suggests:

“The question to be discussed is whether the European ‘authority structure’, as it has evolved, has come to possess its own independent sources of governance and therefore has subordinated the member states to it, or whether it would be more correct to say that we are dealing with a new order of overlapping and competing systems of governance where the national and EU level claim equal authoritative standing.”

[Marlene, 2001, p. 81]

Political theorists, politicians and scholars have been debating over years with the aim of defining this institution and determining the impact such event had on the European political framework. Saying that the EU is just another traditional international organization in my view would mean deny the reality, but it is also difficult to explain how is it possible that sovereign states, which are meant to be the sole master of their international obligations are simultaneously bound by a law that they themselves have instituted [Marlene, 2001]. In Marlene’s view, there are at least four different scenarios which could answer this question:

1. within the first scenario, states had “pool their sovereignty” in order to deliver solutions to collective problems. States shared power with supranational institutions

after thorough calculations and voluntarily so that such situation in any moment can be reversed. In this case, we would speak, rather than integration, of cooperation, which could be treated as a normal interstate interaction,

2. the second scenario classifies the EU as a structure looking at a federalist future,
3. in the third scenario, one would not “lose time” in defining such organization but would be interested in “purely empirical studies of policy making” within the framework of the EU, considered as a “holy grail”,
4. the fourth vision would define the EU as an “altogether new political phenomena that contains strong elements of both fragmentation and federalisation” [Marlene, 2001, pp. 2–3].

Still it is not clear which scenario fits best the situation. Perhaps, the fact that, for now, no one came up with a definitive and convincing answer, is the reason why the European Union is still drawing so much attention to itself. I would like to conclude this work with a fascinating idea which has that federalist flavor that I like so much:

“[Has the Union] been successful in propelling us into a post-sovereign Europe? Or has the irony of history prevailed, so that what was first an anti-sovereignty project has now turned into an aspiration for statehood, with all its paraphernalia, including a flag, an anthem, and, yes, sovereignty itself?”

[Kalmo, Skinner, 2011, p. 19]

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NOTES

¹ Krasner, the same author that appositely coined the expression *Westphalian sovereignty*, admits that “the rules and practices of sovereignty did not begin at any particular point in time. Rather they evolved over several centuries. The Peace of Westphalia, which is often seen as the key transition to the modern state system, was, in fact, only one of many way station”[Krasner, 2011, p. 97]. Moreover, the term *sovereignty* was not invented by Bodin but was already in use for some time when the philosopher adopted it: “The expression *sovereign* and *sovereignty* had been linked to political rule since the 13th century in France, where they first appeared a century earlier. In the beginning, they served to characterize concrete phenomena of significant height, such as mountains or towers. Somewhat later, they were also used to describe the power of God. The reference to physical objects was soon lost. The application to God continued for somewhat longer time. The term’s use in connection with political rule became common” [Grimm, p. 13].

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NICCOLO MACHIAVELLI'S PERSPECTIVE OF POLITICS

POLITYKA W PERSPEKTYWIE NICCOLO MACHIAVELLEGO

Summary

In this article, the focus is on classic author Niccolo Machiavelli. Machiavelli's work has constituted the object of research and analysis from two relatively opposite perspectives: the historical one and the moral one. The aim of the paper is to present Machiavelli's approach for politics in this two perspectives.

Keywords

Niccolo Machiavelli, politics, theory of philosophy

Streszczenie

W artykule skoncentrowano się na klasyce dorobku Niccolo Machiavellego. Prace Machiavellego doprowadziły do wykształcenia się dwóch perspektyw badawczych: historycznej i moralnej. Celem artykułu jest prezentacja poglądów Niccolo Machiavellego na temat polityki z uwzględnieniem tych dwóch perspektyw.

Słowa kluczowe

Niccolo Machiavelli, polityka, teoria filozofii

INTRODUCTION

Niccolo Machiavelli (1469–1527) was a famous Italian Renaissance politician, wise philosopher, writer, historian and outstanding diplomat. His role and contributions in political thought were crucial. Nowadays a lot of philosophers consider him a father of modern political science.

Machiavelli was a very controversial politician. No doubts, his views influenced on a lot of philosophers and writers. Such outstanding philosophers as B. Russel, C. Lefort, Q. Skinner, R. Toscano, L. Strauss, Jean Jack-Rousseau, T. Campanella, J. Bodin, K. Marx, F. Engels, G. Le Bon and Hegel explored his works and reviewed his opinions.

What is more, even some famous politicians gave their opinions about Niccolò Machiavelli. For example, Napoleon and Mussolini considered the position of the writer in the political thought. In my point of view Machiavelli showed the amazing scope of knowledge, strong statements and positions about vulnerable issues. His marvellous works have changed the whole consideration of political science and have started the new era – the era of political realism with strong leaders.

To achieve the goal of the researching work it is necessary to point out which methods we will use in our work. So, we will use the main tools in the accomplishing the purpose of the research:

1. analysis,
2. synthesis,
3. comparison,
4. retrospective,
5. inductive,
6. deductive method.

In conclusion we will provide the summary of our research and we will find out if we can attain the aim of the work.

For the better understanding the positions of the philosopher it is necessary to present some aspects about his life and job. The politician was born in Florence. In that time Florence was under power of popes and religion institutions. Consequently, people tried to limit power of religion. This circumstance influenced on Machiavelli's thought about society, political system and law.

1. Machiavelli Life and His Concept of a Good Leader

He worked as diplomatic, politician and he was responsible for the Florentine militia. He worked as a diplomat for fourteen years. During this time he was meeting a plenty of politicians and statesmen across Europe [Lefort, 2012]. The most significant politicians were Louis XII and Cesare Borgia. The last politician had a great impact on Machiavelli's opinions about political ruling. Furthermore, Cesare Borgia was the role-model for Italian thinker.

Unfortunately, Machiavelli's life was complicated, he was imprisoned and tortured. This circumstance had changed his entire attitude to the world and nature of human beings. We can agree that the writer suffered for his job and political preferences.

He started to write about politicians and countries, especially about political systems of states. No doubts, Niccolò Machiavelli wrote about his own state, nonetheless,

his attempts to resolve Italian problems led to the new vision on political thought. The writer studied a lot of political issues and tried to figure them out.

The most crucial works of the politician were:

1. *Florentine Histories* or *Istorie fiorentine*;
2. *The Art of War*;
3. *The Prince*;
4. *Discourses on the First Decade of Titus Livy*.

All of these books include significant information, wise recommendations and amusing statements which can be considered as unordinary and provocative.

The one of the most outstanding work of the philosopher was *The Prince*. This masterpiece has become a real handbook for significant and famous politicians. Also, we can admire that his opinions and views about political life, the art of war and managing of a state were tremendous and still inspire a plenty of rulers all around the world.

The Prince gives us the whole picture of the best leader with strong surrenders and political system which would lead to the prosperity of a state. Political system should be based on the power of arms, not the power of love and peace [Machiavelli, 1992]. Furthermore, it is better for a good leader to be sometimes cruel. Interesting that murder can be considered as a good and necessary action. However, it can be accepted as needed only if it was committed to achieve important goals for a state. The most significant information is about recommendations how to be a good prince. A good leader has to be rather a good to rule than to be a good man [Le Bon, 1895, p. 14]. Anything beyond this purpose is irrelevant for the prince. The ruler has right to change some rules if it is important to maintain his power and defend his country. However, the prince should remember that he has to be wise and possess such a difficult and desirable quality as virtue [Machiavelli, 1992]. Only person with these characteristics can make his country great and protected. Moreover, he must feel when he has to be canny as a fox and when he should be brave as a lion [Skinner, 2001, p. 41].

In addition, the most criticized and problematic point was about connection between morality, ethics, religion and political ruling. Machiavelli insisted that ethics is a cultural phenomenon [Machiavelli, 1992, p. 35]. It is obvious that this element is a result of actions of society. However, as we know, everything is changing. That's why, ethical values and moral views can be changed within some time. Consequently, everything is temporary. So, there is no reason to be under morality for a good ruler. The main criterion for separation means was usefulness or uselessness of remedies. He did not consider the questions about evil or kindness of the remedies. He did not care about ethical side of this issue, he was worry only about its effectiveness.

The philosopher added that people are weak and they have to be afraid of the punishment for their actions. That's why, he did not deny religion at all. Of course, he criticized religion of the XVI century in Italy because provided ideology influenced on all political deals and led to weakness of politicians. Machiavelli insisted that the leader had to create new laws and order. Consequently, regulation of religion is the main responsibility of the leader. So, according to Machiavelli it is better to put more importance to power than love and to politics than ethics.

It is necessary to point out that Machiavelli not only complained about religion in Italy, he also proposed advice about regulation of religion using historical examples. He showed how Roman people were manipulated by rulers with help of religion [Machiavelli, 1992]. The writer believed that a real and good ruler can make people be responsible for keeping the oath even without influence of religion.

The Prince is not about a good form of a leader. Machiavelli did not want to show a ruler as some kind of blessed and pure creation. He wanted to show the whole recommendations to rulers how to kill, manipulate, lie and use people because of his target. The thinker was honest and directed. The philosopher did not support the point of view that the prince should be a moral person with kind heart. That's why, Machiavelli's work was an amazing example of realism [Moseley, 2011, p. 65].

It is important to underline that Machiavelli's work is considered as a cynical book. Nevertheless, this issue gave value of this book. It was accepted with difficulties and sometimes the book was interpreted in a wrong way. However, *The Prince* was popular and nowadays it is still widespread and authentic. It is necessary to understand the main influence of Niccolo Machiavelli on political administration. For instance, Italian philosopher claimed that the main value in political branch of social life is a state. What is more, a lot of people consider a notion of a state with a strong connection to Machiavelli's works. He put a state in the first place. Also, Italian thinker did not pay much attention on human rights or private and individual interests. These circumstances provoked the positive reaction and acceptance of Machiavelli's thought by communist leaders. He strongly believed that people are not interested in natural rights and freedoms. They think and worry almost about protection of private property. Citizens can handle with the loss of freedom or some important rights but never with the loss of their property.

Machiavelli considered a state as a staff which includes a leader, his ministers, advisers and other subjects. Of course, the main place should be taken by a leader. He has to maintain the power, establish all rules, control the nobles and act in the interest of his country. Machiavelli claimed that a real and strong leader should not trust the nobles and sometimes use force and fear for them. What is interesting, he appreciated the role of ordinary people who can support and help a prince in some cases.

That's why one of the most important advice of Italian thinker is to not provoke a disrespectful attitude to him among the population. There are two approaches to receive respect and support from population – to use fear and to use love. The main purpose is to harmonize these feelings. Of course, the prince should prefer force and fear in ruling because these methods can be more effective and sufficient. However, the wise leader must remember that abuse of fear can stipulate population to revolutionised actions [Le Bon, 1895].

Another crucial element in political administration is attitude and relationship between the prince and nobles. No doubts, ministers and advisers should help the leader and act in his interests because he represents the interests of a state. However, sometimes it seems to be unreal. Nobles can betray the ruler and act only in their personal welfare. Consequently, the main aim for the ruler is to control and limit ministers' actions and freedom in political branch of life. He added examples of great leaders to prove his point of view. As an example he considered Turkish government. Machiavelli believed that Turkey had the king who could demonstrate all features of a good prince [Machiavelli, 1992]. The main secret of his power is that he had total control over the state. In despite it, Machiavelli claimed that barons and ministers can desire to conquer all the power and may hate a king. So, it is much easily to have all control by yourself.

Another significant issue in administration is a question of diplomatic mission and international relations. Machiavelli had an impressive experience in this field of political life. He always had his own position and struggled for it. In the considering branch Machiavelli said that the prince should be wise and carefully in his actions. Sometimes it is useful and necessary to defend your country. That's why, you need to have strong and developed army and military service. On the other hand, sometimes it is necessary to not support wars which can be occur between other states.

Machiavelli argued that in diplomatic relations the ruler has to use the law or use the force. The philosopher claimed that use of force is the method of animals and it is not the best option for people. Nonetheless, practical life showed that use of force is the most sufficient and effective remedy in diplomatic deals. No doubts, the law should exist but it would not help to protect a country and make it powerful. Moreover, the leader has to establish his own law using his wisdom and intelligence [Russel, 2012].

According to the Italian philosopher, there are some rules for considering cruelty as a positive quality. For instance, it is a good illustration when a leader applies violence from the beginning of his authority to protect of a state. Of course, the cruelty must have a target and be applied rarely. Mindless cruelty is bad; but wickedness can be honorable [Machiavelli, 1992]. Machiavelli accepts the ordinary senses of moral terms and employs conventional value judgments and he does not sanitize violence and deceit: Cruel

acts are for him cruel acts whatever the circumstances or benefits [Machiavelli, 1992]. The writer believed that the prince can use various remedies and ways to achieve the certain target. Some modern politicians even prescribe him the phrase “the goal justified the means”. However, he did not use this phrase in his works. Nevertheless, we should admit that the diplomat agreed with this statement.

Analyzing Machiavelli’s opinions on diplomatic mission we can remind the proclamation of K. Marx. German philosopher wrote that the perception of force as the main element in law was derived from views of Machiavelli, Spinoza, Hobbs and Bodin [Shults, 2014, p. 39].

Machiavelli did not use the notion of a state sovereignty. Nevertheless, he was closed to formulate this issue. He considered that a state should possess all features which make it strong and independent in the internal deals and in the relationships with other countries. Nonetheless, Machiavellian perception of power was differed from his followers and opponents. For example, he considered sovereignty as the absolute and unlimited power of the prince. Only he is able to decide the political issues.

We can lead to the conclusion that Niccolo Machiavelli claimed that the main element in diplomatic mission is to have a strong army and be ready to use military force in order to protect it. Talking about war and army we can put our attention on another famous and impressive work of the philosopher *The Art of War*. He formulated the notion of limited welfare [Machiavelli, 2006]. This term means that in the case when diplomacy fails, which is usual situation, the leader should provide war. Moreover, all social institutions are depended from army. This statement has the following explanation – there will be no institutions and state at all without protection and defence.

Special attention in political administration deserves Machiavellian views about republic. Machiavelli absolutely clear described his opinion on republic in his renowned book *The Discourses on the Ten Books of Titus Livy*. Machiavelli thought that the best way for a state is to establish republican form of power [Machiavelli, 2014]. No doubts, the ruler has to hold all power in his hands, however, it does not mean that monarchy is the best solution for this implementation. Only republic can lead to the prosperity because it is the best form of public organization. This point of view seems to be quite surprising because of the other Machiavellian opinions on politics. However, this point of view received recognition and support from the modern thinkers and politicians.

During his research the writer questioned painful issue – corruption. Machiavelli strongly believed that Roman Empire did not have corruption and Roman citizens were not corrupted because of the strict order of this country. Every Roman citizen knew the price for the corruption and was obligated to be checked in established period of time. All these remedies gave the amusing results.

Machiavelli often considered this problematic point because strongly believed that for people it is easy to be corrupted. This fact is connected with not perfect human nature. It is normal for people to want and gain their own awards but states should restrict and limit it. What is more, the writer says that we can see the parallel between corrupted person and soldier who fights for his glory. In both ways it is totally understandable and even desirable. However, we have to remember that soldier should fight for not only his interests and remember about his motherhood. In respect it, the citizen has to act in the interests of common good.

2. An Overview of Historical Politicians and Their Ability to Be a Machiavellian Leader

One of the most interesting and practical aspects of analyzing the influence of Machiavelli on political administration is showing the impact on historical famous politicians such as Stalin, Mussolini and Napoleon.

One of the best examples of Machiavellian Prince was Stalin. The leader of the Soviet Union was one of the bloodiest tyrants in the 20th century [Berthon, 2007, p. 876]. Nevertheless, he was supported and loved because of his cult, propaganda and cruel decision in order to develop the country. Stalin followed the main Machiavellian recommendations [Таненбаум, 2012, p. 47]. For instance, he:

1. paralyzed individual intelligence,
2. supported national prejudice,
3. hid everything that was going on in the world,
4. acted aggressively in international relations,
5. tried to use all scope of military service in order to protect the state from enemies,
6. prohibited absolute freedom,
7. controlled his surrenders,
8. dispensed justice without courts,
9. used military force to maintain the power,
10. created followers of the prince's regime,
11. cultivated the cult of the usurper to the degree of religion,
12. oppressed public opinion,
13. changed the true meaning of words,
14. taught others of history of his ruling,
15. captured his name everywhere,
16. used fear and force,
17. took advantage of the transformation of people into informers.

All these actions in Stalin's authority allowed him to receive astonished results in the branch of political administration. All supporters and ministers had to follow his wishes and negligent all human rights and private interests.

It is necessary to admit that Stalin did not show his respect to Machiavelli, nevertheless, his admirers could see the connection between Machiavellian thought and Stalin's decisions.

Machiavelli also had a great impact on Mussolini. He influenced on fascism and implemented military force in order to impose this regime. Mussolini tried to be Machiavellian Prince because he admired Machiavelli and measured him as a creator of real political science. He claimed that the strong and responsible leader has to kill or to caress people. In addition, Mussolini strongly believed that people can take revenge for a small evil but never for the big one [Berthon, 2007, p. 41]. Italian leader shared the Machiavellian point of view that all people are weak and have to be under strict control of administration. Mussolini claimed that Machiavelli's *The Prince* is the best book for Italian dictatorship because it is about absolute power and wise leader who will lead his country to the best future in economical and political sense. Fascist leader strongly believed that the main issue in political affairs is to have power and only power [Lien, 1929, p. 14]. Nevertheless, we can see the results of his appreciation of Machiavellism.

Consequently, Machiavelli influenced on Italian fascism and some dictators. It is generally accepted in political thought that Machiavellism can prosper in totalitarian regimes and during revolutions. It can be excused because of the nature of strong and non-compromise opinions of the Italian thinker.

We have to notice that a lot of significant politicians were embodiments of Machiavelli's Prince. To illustrate it, we should remember about another crucial and powerful leader – Napoleon Bonaparte. Napoleon was a miser and strong prince, who always thinks about war, reputation of France and provides very strict political actions [Stearns, 1903, p. 58]. It is necessary to say that Napoleon did not support theoretical views of Machiavelli, nevertheless he followed his recommendations. Some philosophers still argue that only Napoleon was the greatest example of Machiavellian prince. He was smart, brave, act only in the interests of his country, made a strong military support and did not care about moral aspects of his political activity. No doubts, Bonaparte read a lot about Machiavelli and used his clever advice. However, the main question is would he consider himself as Machiavelli's prince.

Obviously, all these leaders were strong and influenced. They had a significant support and received an enormously huge recognition. However, their figures were contro-

versial. We cannot deny that all of these leaders used inhumanity methods, negligent human dignity and human rights and led their countries and regimes to a collapse.

3. An Overview of Modern Politicians and Their Ability to Be a Machiavellian Leader

Considering the topic it is crucial to pay attention on modern politicians and analyze their ability to be a Machiavellian Prince [D'Amato, 1972, p. 32].

The most powerful and strict leader of our time is the ruler of North Korea Kim Jong-un. Totalitarian regime and fear of population allow him to make control over all aspects of social and even private life of people. He has the strong and well-developed army, he establishes the law and refuses all religion norms which can limit his absolute power. All ministers have to support and appreciate him and the whole administrative mechanism should exist in accordance with the leader's wishes. To tell the truth, it is extremely difficult to make polls among population of North Korea and receive accurate results of supporting this leader. However, it is pretty obvious that propaganda and strict rules help Kim Jong-un to maintain the power.

Muammar Gaddafi can be considered as Machiavellian Prince in some aspects [Llanila, 2014]. For instance, Libyan leader restricted opposition and was a huge fan of military service. He used force in the way to oppress people who did not support him and his regime. It is necessary and interesting to point out that he used the Machiavellian advice to apply fear, however, population supported him and did not hate Gaddafi. He received great results in economic branch and tried to protect his country from others. Nevertheless, the fact that he eliminated all opposite parties and suppressed a lot of people led to the conflict with other states. Of course, this circumstance unenthusiastically influenced on his future life.

Modern philosophers deem Vladimir Putin as a great example of Machiavellian leader. For example, Russian President develops army and tries to provide aggressive position of his state with other entities [Nikitin, 2013]. All administrative machine and all branches of power should act in accordance with Putin's permission. Despite the fact that Russia does not have a good level of human rights' protection, citizens of Russian Federation support Russian leader.

Nowadays Machiavellian opinions and Machiavellism seem to be very controversial and hard for understanding. The most problematic issue is to perceive the desire of politicians to be Machiavellian Prince and results from these actions.

CONCLUSION

In conclusion, it is necessary to say that Machiavelli created special rules, gave his own opinions on states and on problematic issues in his times. No doubts, his views were really extremely progressive for Italy, however, he created the whole new branch of science, influenced on the most renowned politicians, lawyers and philosophers and changed attitude to the ruling of states.

His opinions on the features of prince were controversial, sometimes aggressive and immoral. However, on the other hand, he opened and described the picture of successful politician who loves his country and acts in its interests. That's the crucial point. Obviously, to be Machiavellian Prince is incredibly difficult work and assignment. Consequently, this mission is not for weak persons who hesitate in their own decisions.

Machiavelli influenced on the most famous politicians and political science at all. His views were criticized by a lot of politicians and philosophers, he even was called as a son of devil because of his opinions on religion and morality. Nevertheless, his views are still relevant, helpful and interesting for modern politicians and leaders in other social activities. No doubts, Machiavelli created a new and broad way of thinking about leadership in all branches of power. That's why, we can consider the Italian thinker as one of the most famous, extraordinary and fascinating figures in political administration and political science.

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Part II.

Comparative Administrative Law

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ADMINISTRATIVE LAW AND CONSTITUTIONAL MATRIX – AN ENGLISH PERSPECTIVE

RELACJE MIĘDZY PRAWEM ADMINISTRACYJNYM A KONSTYTUCYJNYM
– PERSPEKTYWA ANGIELSKA

Summary

The article amounts to compare the approach of English legal system towards administrative values with other European legal orders. The main purpose is to depict uniqueness of common law system in case of unwritten constitutional legal order. One of the most intriguing aspects of this situation is that England belongs to Europe which is strongly related to civil law approach. Research conducted in this regard leads to a broad discussion what potential scope for judicial review remains in case of English administrative law. The main outcome is that, even though, British administrative law is based on precedence and unwritten constitution, it remains effective and perfectly fitting to the shape of English law.

Keywords

constitutionalism, administrative law, rule of law, judicial review

Streszczenie

W artykule podjęta została próba analizy porównawczej angielskiego podejścia do prawa administracyjnego z podejściami występującymi w krajach europejskich. Celem artykułu jest ukazanie unikatowości angielskiego systemu prawnego *common law*. Szczególną uwagę zwrócono na brak konstytucji w formie jednego aktu prawnego oraz na fakt, że angielski system prawny jest oparty na precedensie. Przeprowadzone w tym zakresie badania skłaniają do dyskusji na temat potencjalnego zakresu kontroli sądowej angielskiego prawa administracyjnego. Głównym rezultatem przeprowadzonych w artykule rozważań jest to, że prawo angielskie, mimo że opiera się na precedensie i niepisanej konstytucji, pozostaje skuteczne i doskonale wpisuje się w istotę systemu *common law*.

Słowa kluczowe

konstytucjonalizm, prawo administracyjne, zasada praworządności, kontrola sądowa

INTRODUCTION

Administrative law remains a branch of law being in a special relation with the constitution as a document and of a constitutional character. In a very abstract sense both of those fields serve to ensure the relationship of a democratic character between individuals and the state. Starting from the general perspective, administrative law is a branch belonging to a public law which shall govern public policies. Due to a constant growth of administrative bodies' influence the amount of challenges grows as well. This is a general statement which remains true regardless of a state discussed, nevertheless, there are two aspects which make the United Kingdom of an especially interesting character and those are: the lack of a written constitution and distinct, common law, character of a state located in Europe. Administrative law endlessly tries to interrelate between being capable enough to act and being accountable for the actions taken. From this perspective it seems to be quite intuitive that administrative law is a tool created to protect individuals and grant a possibility to perform some actions within a state. Going even further with this analysis one can easily say that public administration and administrative law are strongly connected with individual rights of citizens and, consequently, connected with the constitution.

1. English and Continental Systems of Administrative Law – An Attempt Towards Comparison

At the beginning, it is crucial to note that English administrative law is a different phenomenon than French *droit administratif* or German *Verwaltungsrecht* [Thomar, 2000, p. 2]. In case of both French and German legal systems there is a strongly drawn regime of administrative law created as a powerful legal tool. An assumption that in civil-law oriented Europe a common law England would be different is almost obvious. The UK has a difficult and *sui generis* constitution which may be found among different documents, partially legal and partially extra-legal [Dorsen, Sajó and Rosenfeld, 2003]. The whole idea of the English legal system being a common law with no supreme document within a state with the additional value of the heritage of feudal tradition still present in law legacy makes English law extraordinary once administrative law comes into play. It shall be also kept in mind that the United Kingdom is a state of strong parliamentary supremacy. Such statement is not only related to a historical establishment of the rule but a real legal tradition currently present in the system. The Parliament holds a role of the representation of a Monarch, therefore the Lords and the Commons act together as a supreme body within the state. Interestingly enough, once there is an attempt

to translate this approach into more general, widely known, rule it ends up being called sovereignty of the state [Dorsen, Sajó and Rosenfeld, 2003]. In this place, it is necessary to ask what is a constitution? Why there is a strong majority of states having it in a written form? Both of those questions are of an abstract character and without one certain answer. In a very simple understanding, what remains true for most of the European countries, a constitution is a set of liberties, rights ensured by a document made not as a regular legal act but as an act made for generations. We have different constitutional documents, such as Magna Carta or Bill of Rights, but does it indicate that there is a constitution? English Lords sometimes refer to certain aspects as of a “constitutional importance”, as it happened in case of Lord Diplock and Scarman [Duport Steels v. Sirs, 1980]. It denotes that there is a reasonable ground to believe that a complex construction operating instead of one act fulfills the duty of a written constitution. Going further, once the source for both administrative and constitutional law is partially the same – (the constitution), but at the same time different (unwritten form), there is a potential for a vast amount of blurred lines between both systems. This approach finds its roots in some early English writers’ quotes which state that the difference between administrative law and attempting to draw such boundary is an artificial and exotic idea.

2. The Role of the Judiciary in Developing English Administrative Law

The traditional English approach towards administrative law comes from Victorian Times and promotes two main key factors:

1. the Parliament is sovereign,
2. the rule of law requires both individuals and public bodies to be subjected to the law of the land with no difference in treatment and privileges [Thomar, 2000, p. 3].

Due to the course of history and the changes in law there was a need to create a nexus between Victorian order and any newer approach. In case of England, the connection between present and past took the form of established practices. The dominant political culture was strongly grounded on the practical experience of governing classes who, due to their education and experience, were capable of recognizing some *dignified* or *efficient* parts of the constitution [Bagehot, 1993, p. 44]. The approach of, a nonobvious (to some extent) process behind English administrative law and governance finds its roots in a strong contrast between continental and English approaches. In case of Britain, instead of settled procedures one can encounter more of an informal rules and assumptions. That is why in common law systems (as in England) administrative certainty is often exchanged with the art of law rather than science. It is important to note that one of the most determining factors for English law to be so different

from continental law is no influence of Roman law in Britain. As for the different legal influences and strong feudal tradition, a common law system in England ended up as being judge-made with vast catalogue of differences once compared with continental law. The nature of the English law was inspiringly summarized by Sir Edward Coke C.J. in one of his writings – *Prohibition del Roy* from 1607. Sir Coke stated that “Law was founded upon reason, and that he [The King] and others had reason, as well as the Judges [...] they [laws] are not decided by reason but by the artificial reason and judgment of Law, which Law is an act which requires long study and experience, before that a man can attain to the cognizance of it” [Sheppard, 2003, p. 481].

The phrase quoted above can be summarized with the statement that under the English law the focus is on practice and the huge potential of the judges to decide upon law. Law, based on a precedence, seems to be even more difficult to understand for continental lawyers used to the codified perspective. In the area which, by its own definition, should be free from any discretionary power, we meet whole standards driven out of cases. It becomes exceptionally visible in the idea of a state. In European countries like France of England there is a strong idea of a state. Under French legal culture it is recalled as *l'état de droit* and in case of German as *Rechtsstaat*. In case of the United Kingdom instead of any of the ideals mentioned above, one can encounter more of a tradition and the idea of the Crown and Parliamentary sovereignty than the pure idea of a promotion of state power. This approach has been very often a subject of criticism from continental lawyers. For example, in 1903 a group of comparative scholars noticed that continental public law is an absolute antithesis to the development of public law, as well as the constitution in England [Redlich, Hirst, 1903]. The difference cannot be neglected, and the administrative culture of the continent characterized by the model of bureaucracy with legal-rational approach may be hardly compared with more discretionary-based English system where the judges play a central part. There are two areas of law where pointing out particular differences between continental and common law approaches seem to be the most vivid. Firstly, one can point out a right to compensation. Under most European legal orders like German, Dutch or French there is a complex system for granting a compensation in case of administrative actions. In case of English legal system, the right to compensation may only exist in case of a lawful administrative action on the ground of disproportionate public burden based on a specific statute [Stroink, Linden, 2005]. Consequently, on the other hand we can observe a vast trust towards the lower courts in the capability of applying law and for the higher courts in law making as well as lack of possibility for non-statutory right to compensation. The areas mostly entitled for a compensation under English legal system are denoted by Land

Compensation Act from 1973. The main area mentioned in the act which may be covered by compensation are:

1. the sphere of expropriation,
2. serious nuisance as a result of public activities.

The latter criterion is especially limited to the compulsory sale, concerning citizens being touched by unbeneficial planning of the public authority actions [Stroink, Linden, 2005]. Apart from the rather exceptional statute-based liability scope, it is important to notice that the English legal system puts trust in the lower ordinance – consequently, strong discretionary power is granted to courts to apply common law standards. What joins the perspective of the citizens with the position of public bodies is that both of them are subjected to the rule of law perspective in the form of judicial review. It is important to keep in mind that common law states that either England or India can be characterized by different approaches to judicial review. At the beginning, the possibility to conduct this was rather limited. Nevertheless, in the course of time, there was a pressing social need to develop this area of law. Such approach was especially highlighted by the growing importance of human rights and ideas, like protection from arbitrary decision and proportionality. The aspect of a judicial review is especially important because, by now, strong majority of cases concerning administrative law arose of from the grounds of the courts of 1st instance which, as a consequence, were supervised by the Queen's Bench Division [Jones, Thompson, 1996]. The situation of an administrative responsibility in case of the English legal system is rather complex and the initial assumption is that public bodies shall not be granted with more extensive laws than individuals. On the other hand, their laws should not be placed lower than the ones belonging to the members of society. The balance introduced by the system amounts to convey the message that there shall be no fear for administrative bodies unless liability is implied by a legal act. As an example of liability under the British law one can recall *Dunne v. North Western Gas Board* from 1964. The case concerned the application of strict liability principle for the administrative body. As the final result, the Court accepted that there is a possibility to help a public body responsible for the strict liability, once there is a real occurrence of a dangerous situation on its own premises. Since this landmark case and innovative, at that time, application of strict liability the newer trend, namely advocacy towards French approach of liability for public bodies came into play [Forsyth, 2000]. Due to a different development of some areas of compensation (and, consequently, responsibility) in case of administrative bodies there was a need to employ some notions in exchange. In general, the English law deals with some aspects by introducing broad notions as equity. Nevertheless, in case of administrative law, which remains pretty statutory-related with a strong constitutional background, it seems to be difficult. Due

to this background, the English legal system employed a solution for extra-statutory areas in the form of principles as proportionality and equality. There is also a criticism towards English approach which highlights the perspective that such uncertainty in law may lead to uneven distribution of the public burden. Such approach was mentioned by Stroink F. and van der Linden E. in the book *Judicial lawmaking and administrative law*. Mentioned values may serve as a ground for judicial review. In case of English judges (similarly to, for example, German judges) in case of judicial review in case of administrative law, they operate in a different constitutional framework, even though, in the classic understanding of British legal culture, the main ground for constitutional check is not denoted as the constitution per se but as the intention of the Parliament and its discretionary power [Künnecke, 2007]. Furthermore, the standard is a growing concept which evolves through the years jointly with constitution. One of the important changes introduced in the administrative review functionality was triggered by the Human Rights Act which entered into force in 1998 in the United Kingdom. The said Act was a solution to the case of how to incorporate the European Convention on Human Rights standards to the English legal system as the one not used to apply external sources and long acts. Due to the content itself, a special place occupied by individual rights and standards ensuring protection to some fundamental values, The Human Rights Act became of a constitutional character. English courts tend to be very flexible in developing principles out of case law which may serve as a ground for review, and that is why there is a strong tendency in the UK to decide upon the facts of the case. Nevertheless, even the flexibility may not simply overturn the years of practice but there is a potential to look for a common denominator in both cases. Under the English law the proportionality test, which serves as a ground for a judicial review with the potential to disqualify administrative decision, started with unreasonableness idea, which can be found, for example, in *Wednesbury* principle [Associated Provincial Picture Houses Ltd v. Wednesbury Corporation, 1948]. According to said rule, “a discretionary decision of a public authority should be quashed by the courts only if it is ‘so unreasonable that no reasonable authority could ever come to it’, whereas the principle of proportionality as it has been developed by EC and ECHR case law, holds that the decision of public body should be quashed only if it adverts effects on a legally protected interest or right go further than can be justified in order to achieve the legitimate aim of the decision” [Burca, 1997, p. 562].

The distinction between what is used by the EU under strict proportionality principle and by the United Kingdom equalizes at the level of the aim pursued. It is important to be aware that, contrary to the continental Europe, under English jurisdiction, the choice between different forms of proportionality is caused by the Parliamentary sovereignty and not by the separation of powers worked in the advantage of, for example,

executive [Ellis, 1999, pp. 60–61]. The more concrete the regulation is employed by the scope of proportionality principle, the stricter the possible judicial review. In case of European continental legal system principle of proportionality is rather broadly used with the ECHR leading approach to balance individual's right against another. In case of England, proportionality is applied; nevertheless, in the field of administrative law dealing with aspects concerning public policy there are some limitations arising out of practice. There is a tradition under the English law which claims that some actions caused by policy or allocation of resources shall not be a ground for complaints in case of, for example, contract law. Controversially enough, such rule is also present in case of administrative law. In scope of policy and proportionality the issue was raised in front of the Court of Appeal during the revision of the judgment described in *R v. Chief Constable of Sussex, ex parte International Trader's Ferry Ltd.* Case [R v. Chief Constable of Sussex, ex parte International Trader's Ferry Ltd, 1997]. The case concerned a limitation made by the decision of Chief Constable towards the police assistance. The assistance was necessary to facilitate the export of animals to another member state and it was limited to two days only. It is important to notice that the assistance of the police was necessary to facilitate the process and there was no possibility to solve this differently. The Court of Appeal revised the decision of Divisional Court and held that managing resources like police is tightly connected with allocation of resources and is also made through policy decisions. Taking into account the limited character of manpower and financial assets, the Court of Appeal claimed that the decision to place some limitation upon the export is in line with the principle of proportionality. Kennedy L.J. pointed out an important distinction between well-known human rights proportionality and proportionality applied outside of this field of law. According to Kennedy, outside of the field of human rights, proportionality should normally only be applied in means that are grossly out of balance in relation to the end sought. Furthermore, he elaborated on the potential of interference with Chief Constable's decision by stating that under both EU and national law there should be no space for the interference unless it can be proven that Chief Constable was planning wrong [Ellis, 1990].

3. The Relationship Between Administrative Law and Constitutional Law: An English Perspective

Due to common law structure and close relation between constitutional and administrative law in England the area of overlap and scope of application may seem to be blurry. As mentioned before, the idea of judicial review in the UK functions differently than in continental Europe, especially in case of proportionality idea. Previously, The

Human Rights Act was also mentioned as an introduction of the European Convention to the English legal system. Even though, there was no clear statement on it being a newly growing source of administrative law, due to its character The Human Rights Act has factually affected the way the English law operates. What was newly introduced to the English legal system is independence as a separate protection ground [Endicott, 2015, p. 177]. Article 6 regulates that the right to a fair hearing and, consequently, a fair investigation in case of governmental wrongdoing shall be conducted independently from the government. The reading's straight forward approach may seem like a revolutionary step for the English legal system and in light of the art. 6 it may seem that in case of *Cooper v. Board of Works* or *Ridge v. Baldwin* the decisions were made by administrative bodies belonging to the government so consequently, such decisions were not independent. Nevertheless, it is crucial to highlight that there was no revolution, for those who were aware of how the English law works. This answer seems to be obvious but for the opposite side it may be disturbing. In general, British law and lawyers are not a strong supporters of big-revolution changes. The awareness of how influential the creation of a new precedence may be and how strong is the role of a judge in any branch of law is, provides a big support for the reluctance to go into the direction of big boom solutions. Instead of an absolute change of the approach there was a substantial change conducted in a more balanced way and with a limited scope, such as in the case *R (Anderson) v. Home Secretary* from 2002 [R (Anderson) v. Home Secretary, 2002]. The factual background of the case was as follows: Anderson received a life imprisonment sentence after he had been convicted of committing two murders. The Secretary of the State decided to set a period for Anderson's release on licence longer than recommended. According to the Crime Sentence Act from 1997 it was within a discretionary power of the Secretary of the State to decide upon the minimum time for the prisoner to remain in custody before he may potentially be released on licence. Anderson in his complaint stated that the Secretary of the State belongs to the executive and, consequently, that it violates art. 6, as the decision as such determining his minimum sentence time is taken by the executive. For the current English system such approach was quite innovative and external because it does not only extend the possibility of a judge to revise administrative decisions but also brings a new role activated by the European Convention to the system. The Court allowed the appeal and found out that leaving such decision, of a factual not procedural character, gives a judicial ability to the Secretary's Office which is not in line with the requirements stated in The Human Right Act. Before the Act entered into force, the judges where only able to make a suggestion towards the Secretary. After the case it was recognized by law that judges are capable of declaring that the status is contradictory with the Convention and declare it as void. Such approach, based on constitution-

ally recognized act, clearly casts a new light to the discussion about judicial review and the potential for courts to conduct it. If this case was decided in such a clear way by the Court stating that the judges can review such decisions and that there is a need for independence why the change couldn't be classified as a revolution? According to the requirements of the art. 6 from the Act, such approach may be taken only in case of decisions concerning criminal or civil rights as it was in the case. Even though it may look differently, there is no general requirement of independence to administrative law in case of English legal system [Endicott, 2015].

The English legal system in a combination with tradition steaming from common law country and interaction with external European and pan-European systems. An example of such a contribution might be the, European Convention on Human Rights and individual rights protection standards. The system, at least at the beginning, may seem to be a complex chaos difficult to understand by civil law-oriented lawyers. An English scholar, Albert Venn Dicey, claimed that treating public administration and private individuals on the same basis allows to the English legal system to protect its basic liberties in a better way than civil law countries do. Even if due to the Parliamentary supremacy and most of constitutional related rules being interpreted as the ones performed because of the will of the Parliament, there is a clear separation of powers – even in case of judicial review. That is why there is a need to respect bodies of equal status. As an example, one can recall the rule that High Court cannot review another superior court decision [Racal Communications, 1981], nevertheless High Courts can review all decisions made by executive bodies as, for example, police, local governments, ministers, military bodies, non-department public bodies.

The time which passed since *Wednesbury* [Associated Provincial Picture Houses Ltd v. Wednesbury Corporation, 1948] judgment is the time of building a new approach towards judicial review and administrative law. As one of the most visible metamorphosis, one can point out a shift from examining powers and procedures to the review of substance. Right now, we are witnessing a strong growth of new tendencies under administrative law, which may be called the constitutionalization of administrative law. Such approach in case of the English legal system, is especially visible after the introduction of The Human Rights Act in 1998. This visible shift may be compared to the general development of the principle of legality in the area of administrative law [Dyzenhaus, Hunt and Taggart, 2001]. The main result of the change is the focus on the justifications instead of the explanations. At the first glance, the difference may seem to be only of a semantic value, nevertheless, in case of standards, any justification requires a reason and the reason should be of a certain quality. This requires the norms of law to be capable of determining what constitutes a good reason [Dyzenhaus, 1997]. A good reason is es-

pecially visible in case of human rights area due to important distinction made in the doctrine. The judges and the courts started to be not only responsible for national law but also for the upgrade in national law based on incoming external triggers in a form of international law. The changes and new growing areas of law brings not only a change in administrative law in the UK but also within public administration. Colin Scot explored the idea with an attempt to map this complex sphere. His conclusion was that currently there is a possibility to distinguish four regimes of governance, namely (1) Governance through public law; (2) Governance through markets and competitions; (3) Governance through networks and communities; (4) Governance through design [Scott, 2006, p. 177–178]. The author claims that each of those modalities of governance brings some templates of responsibility with the potential to exclude the last one from this catalogue. The fact that legal writers observe some distinguishable changes in the area of public administration, as well as administrative law only proves that changes brought by European legal order, in case of the United Kingdom are very strong .

CONCLUSION

As a summary statement, the English legal system remains a great research area in the sphere of administrative law. This common law country, arising out of feudal tradition with no written constitution may be seen as a fascinating once it comes to such precise area of law as administrative law. This complex mixture is upgraded by the influence from external perspective. The United Kingdom is the only country within Europe with such strong common law approach and tradition. Besides that, and very unique legal culture, the United Kingdom actively participates in international law and, before Brexit, was an important part of EU infrastructure. This openness was a two-directions sword because, on one hand it brought numerous positive changes in the system, on the other it was not without any cost. The United Kingdom faced numerous difficulties on its way to European integration on the side of EU, as well as human rights instruments. Even though, the clash of two legal cultures did not paralyze the English law – it enriched it in an imperfect way which we can experience and observe right now. Beside any criticism, the determination to preserve tradition and to build a nexus between the past and the present is a great success of the British law.

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REQUIREMENTS FOR BECOMING AN INSTRUCTOR IN THE LIGHT OF CURRENT LEGAL REGULATIONS IN POLAND

WYMOGI UZYSKANIA STATUSU INSTRUKTORA W ŚWIELE OBOWIĄZUJĄCYCH W POLSCE REGULACJI PRAWNYCH

Summary

The article addresses requirements for becoming an instructor in Poland. The aim of the author is to stress the consequences of the 2011 reform. The paper describes following conditions: a required time of possession of documents stating a particular kind of eligibility to drive depending on a relevant kind of instructor qualifications; possession of valid certificates on the lack of health and psychological contraindications to perform instructor activities; completion of a relevant instructor course (which has to be certified); pass an exam verifying qualifications before an committee appointed by a voivode; lack of specified convictions which follow from a legally valid court sentence; entry in a register of instructors.

Keywords

driving school, instructor, vehicle

Streszczenie

Niniejszy artykuł dotyczy wymogów, które należy spełnić, aby zostać instruktorem nauki jazdy w Polsce. Autor podkreśla znaczenie reformy z 2011 roku dla podejmowanej tematyki. Praca opisuje następujące warunki: wymagany czas posiadania określonych dokumentów stwierdzających uprawnienie do kierowania w zależności od odpowiednich uprawnień instruktora; posiadanie orzeczenia lekarskiego oraz orzeczenia psychologicznego o braku przeciwwskazań, odpowiednio zdrowotnych i psychologicznych, do wykonywania czynności instruktora; ukończenie z wynikiem pozytywnym kursu dla kandydatów na instruktorów oraz posiadanie zaświadczenia o jego ukończeniu; złożenie z wynikiem pozytywnym egzaminu sprawdzającego kwalifikacje przed komisją powołaną przez wojewodę; brak skazania prawomocnym wyrokiem sądu w określonym zakresie; bycie wpisanym do ewidencji instruktorów.

Słowa kluczowe

szkoła jazdy, instruktor, pojazd

INTRODUCTION

The article addresses requirements for becoming an instructor under the Polish law¹. Until the 2011 reform, which came into force on January 19, 2013, these conditions were stated in art. 105 par. 2 of the road traffic law [the last version before the reform effectiveness: ustawa z dnia 20 czerwca 1997 r. Prawo o ruchu drogowym, Dz. U. 2012 r., poz. 1137 – further: “p.r.d.”]. As for the succeeding regulation, the issue is addressed by art. 33 par. 1 of the act on vehicle drivers [ustawa z dnia 5 stycznia 2011 r. o kierujących pojazdami, Dz. U. 2017, poz. 978 – further “u.k.p.”]. As it can be inferred from the above, the 2011 reform, *inter alia*, relocated instructor-related matters from p.r.d. to u.k.p. However, the lawgiver simultaneously introduced many significant content changes. According to the designers of the reform, it was shaped in such a way as to increase road safety, improve drivers qualifications and minimize fraud, unreliable service and corruption [RM, 2010, p. 1]. As a result, today’s regulation which relates to vehicle drivers is much more extensive than a previous one, which conclusion generally relates also to art. 33 par. 1 u.k.p.²

Undoubtedly, taking into account the subject matter of the paper, it is reasonable to claim that analysis of the abovementioned provision of substantive law should be the main subject of interest. Nonetheless, to become an instructor, a public power has to decide that conditions are fulfilled. Hence, effectively, requirements for becoming an driving instructor are inextricably linked to an administrative procedure. In Poland, this procedure is conducted by a *starosta*³, body placed in the realm of a territorial self-government⁴. According to art. 33 par. 2 point 1 u.k.p., a *starosta* registers as an instructor (*wpisuje do ewidencji*), by way of an administrative decision, for a fee (*za opłatą*) and after payment of the registration fee (*po uiszczeniu opłaty ewidencyjnej*⁵), a person meeting the requirements specified in paragraph 1 points 1–8 (of art. 33 u.k.p.). However, according to point 3 letter a, a *starosta* refuses to register as an instructor (*odmawia wpisu do ewidencji*), through an administrative decision, if the person does not meet the requirements specified in paragraph 1 points 1–8 (of art. 33 u.k.p.). It should be noted that a course of this procedure can differ significantly. For example, as far as a person concerned wants to become an instructor for the first time, she or he has to pass an exam, which can take months⁶. On the other hand, in the case of a person who has been an instructor in the past – and as such can “automatically” fulfill conditions for becoming an instructor at the moment of submitting a relevant motion, except for one – it can be genuinely forthwith⁷.

Today’s conditions for becoming an instructor are stated in art. 33 par. 1 u.k.p. The relevant paragraph comprises 9 points, preceded by an introduction: “an instructor is a person who:...” (*instruktorem jest osoba, która:...*)⁸. However, the first point was removed in its entirety by the amendment which came into force in August 23, 2013⁹.

1. Driving License Or a Permission to Drive a Tram

When it comes to art. 33 par. 1 point 2 u.k.p., it specifies the required time of possession of particular driving license (*prawo jazdy*) category depending on a relevant category of instructor qualifications. As a matter of fact, it provides irresistibly casuistic regulation and one should also bear in mind that it is applicable in the case of becoming an instructor as well as in the case of the extension of instructor qualifications. The required terms of possession of particular driving license category are as follows: at least 2 years for category A (letter a of point 2), at least 2 years for category B (letter b of point 2), at least one year for categories B + E, C1, C1 + E, C, C + E, D1, D1 + E, D or D + E (letter c of point 2) and at least 2 years for category T (letter d of point 2). Nonetheless, in the case of categories A and T, this requirement applies only to instructors who obtain instructor qualifications exclusively with regard to categories A and T, respectively. Moreover, as far as categories B + E, C1, C1 + E, C, C + E, D1, D1 + E, D or D + E are concerned, point 2 demands additionally at least 3 years of experience in conducting training for persons applying for driving license in the field of category B. Thus, it is impossible to become an instructor regarding these categories for a person who becomes an instructor for the first time. As for the point 3 of art. 33 par. 1 u.k.p., it is analogous to the point 2, however, it relates to instructors of persons applying for the eligibility to drive a tram. Accordingly, it is not surprising that the lawgiver demands from them a permission to drive a tram (*pozwolenie na kierowanie tramwajem* – tram counterpart of a driving license). Nonetheless, this condition is combined with the required time of possession of a driving license in the field of category B, which is 2 years. It should be also noted that point 2 and point 3 jointly form equivalent of the former art. 105 par. 2 point 2 of p.r.d., which governed that an instructor is a person who possesses, for a period of at least 3 years, an eligibility to drive vehicles of a type covered by a training. Undoubtedly, the lawgiver is much more talkative today.

2. Medical and Psychological Certificates

As for the art. 33 par. 1 point 4 and 5, they make an instructor status dependant on the sufficient health and psychological condition. Under point 4, an instructor is a person who has a valid medical certificate (*ważne orzeczenie lekarskie*) on the lack of health contraindications to perform instructor activities, while according to point 5, an instructor is a person who has a valid psychological certificate (*ważne orzeczenie psychologiczne*) on the lack of psychological contraindications to perform instructor activities. Again, the lawgiver developed his stance towards this issue comparing to the times under p.r.d. In the past, art. 105 par. 2 point 3 of this statute governed that an instructor is a person who pre-

sented a medical certificate on the lack of health contraindications to drive a vehicle and a psychological certificate on the lack of psychological contraindications to drive a vehicle. As it can be seen, certificates on the lack of health and psychological contraindications to perform instructor activities (*do wykonywania czynności instruktora*) replaced certificates on the lack of health and psychological contraindications to drive a vehicle (*do kierowania pojazdem*). In consequence, today, there is a qualitative difference between medical and psychological examinations demanded to get a driving license (art. 11 par. 1 point 2 letter a u.k.p.) and to become an instructor (art. 33 par. 1 point 4 and point 5 u.k.p.), while in the past the former (previous art. 90 par. 1 point 2 p.r.d.) and the later (previous art. 105 par. 2 point 3) were the same. Unfortunately, it still happens that candidates for instructors submit certificates on the lack of health and psychological contraindications to (merely) drive a vehicle. At no time, can they be accepted, however.

It should be stressed that health and psychological certificates do not work in a “once-and-for-all” manner. Article 34 par. 5 u.k.p. stipulates terms of their validity. Instructors who are under 60 years old should be examined periodically every 5 years (point 1), while instructors who are above 60 years old should be examined periodically every 30 months (point 2). However, there are exceptions from this general rules. Under par. 6, terms of validity may be shortened if a doctor or a psychologist recognize in an examined person medical state indicating the possibility of health contraindications to drive vehicles before the time limits referred to in paragraph 5¹⁰ (incidentally, the construction of art. 34 u.k.p. was criticized by Soboń [Soboń, 2016, p. 138]. What is of importance, there is a direct link between the validity of certificates and the validity of an instructor card (*legitymacja instruktora*). As art. 36 par. 1 governs, a *starosta* issues an instructor card, specifying its validity for the period resulting from the medical and psychological examinations. Additionally, according to art. 36 par. 2, a *starosta* shall extend the period of a card validity for the period resulting from the dates of subsequent medical and psychological examinations.

3. Relevant Instructor Course and Exam

According to art. 33 par. 1 point 6, a person has to complete a relevant course with a positive result and to have a certificate of completion (*ukończyła z wynikiem pozytywnym kurs dla kandydatów na instruktorów i posiada zaświadczenie o jego ukończeniu*). This provision relates only to instructors of persons applying for the right to drive motor vehicles – *pojazdy silnikowe*). It should be stressed that a relevant course – as well as a subsequent exam – are always referred to particular instructor qualifications (e.g. A or B). There is no one “general” instructor course. What seems to be one of the most important

contributions of the 2011 reform, under art. 35 par. 1 point 1 u.k.p. a relevant course is generally organized by driving schools with the certificate confirming the fulfillment of additional requirements (*ośrodek szkolenia kierowców posiadający poświadczenie potwierdzające spełnienie dodatkowych wymagań*), nicknamed as “Super driving schools” [Bałaban, 2010, s. 13]. According to art. 35 par. 2 u.k.p., a relevant course is conducted within the scope of eligibilities of respective driving license categories, however, in the case of extending instructor qualifications, an attendee participates only in the supplementary course. As a matter of fact, the statute provides only a general framework. When it comes to details, the organizer of relevant courses is guided by the regulation of Minister of Infrastructure and Construction of 4 March 2016 on the training of persons who apply for eligibilities to drive vehicles and persons who apply for instructor and lecturer eligibilities [Rozporządzenie Ministra Infrastruktury i Budownictwa z dnia 4 marca 2016 r. w sprawie szkolenia osób ubiegających się o uprawnienia do kierowania pojazdami, instruktorów i wykładowców]. As stated in par. 23 of the aforementioned regulation, the number of hours of theoretical and practical classes for participants of the instructor candidate course or the supplementary course for instructors is determined by a course organizer, but it cannot be less than specified in the table No. 1 (which, however, orders to take into account also the number of hours from table No. 2). It should be added that to participate in the instructor course a person has to already possess medical and psychological certificates (art. 34 par. 5 u.k.p.).

As for point 7 of art. 33 par. 1 u.k.p., it demands to pass an exam verifying qualifications before a committee appointed by a voivode (*złożyła z wynikiem pozytywnym egzamin sprawdzający kwalifikacje przed komisją powołaną przez wojewodę*). It is the ‘next stage’ after the completion of a relevant course for instructors. The point in time between the accomplishment of a relevant course and taking an exam is the time when, in fact, an administrative procedure starts. As a matter of fact, the application for entry in a register of instructors requires to attach the certificate of a relevant course completion. Only then a *starosta* can submit to a voivode an exam motion in regard to a given person. The issue of an exam is outlined in art. 39 u.k.p. and unfolded in the Regulation of the Minister of Infrastructure and Construction of 7 October 2016 on obtaining qualifications by instructors and lecturers, fees and patterns of documents used in these matters, as well as remuneration rates for committee members [Rozporządzenie Ministra Infrastruktury i Budownictwa z dnia 7 października 2016 w sprawie uzyskiwania uprawnień przez instruktorów i wykładowców, opłat oraz wzorów dokumentów stosowanych w tych sprawach, a także stawek wynagrodzenia członków komisji].

4. Unpunishability and Entry in a Register of Instructors

When it comes to art. 33 par. 1 point 8, an instructor is a person who was not convicted by a legally valid court sentence (*nie była skazana prawomocnym wyrokiem sądu*) for: a) crime against communication security; b) crime committed in order to gain a material or personal advantage; c) crime against the credibility of documents; d) driving a vehicle in the state after using alcohol or in the state after using another similarly acting drug; e) intentional crime against life and health; f) crime against sexual freedom and decency. In the times of p.r.d., corresponding provision (art. 105 par. 2 point 6 p.r.d.) demanded only to not be punished by a court verdict for an crime against road safety. Today, neither a conviction has to be connected directly with the road safety, nor it has to be always related to crime. One can reasonably claim that letter b, letter c, letter e and letter f do not require nexus with the road safety. Moreover, in letter d, a word ‘crime’ is not used. Accordingly, it can be also an offense, which view was confirmed in the case law [III SA/Łd 73/14]. Intentions of the lawgiver seem to be clear. The scope of convictions which excludes the possibility of performing instructor activities is much wider than under the rule of p.r.d. It should be also stressed that the issue of being convicted by a valid court sentence is a dynamic one (and, because of an institution of expungement, not always in disadvantage of candidates for becoming an instructor). In my view, as a general principle, a *starosta* should check criminal record of a candidate just before issuance of an administrative decision, notwithstanding an earlier information in this regard. As far as the last point of art. 33 par. 1 u.k.p. is concerned, it governs that an instructor is a person registered as an instructor. This issue is strictly connected with art. 33 par. 2 u.k.p., which was outlined in the introduction. A *starosta* registers as an instructor, through an administrative decision, a person meeting the requirements specified in art. 33 par. 1 points 1–8 u.k.p.

CONCLUSION

The paper addressed the issue of conditions for becoming an instructor in the Polish jurisdiction. The emphasize was put on the fact that the current legal solutions result from the 2011 reform. The author described following requirements which are necessary to acquire instructor status: a required time of possession of documents stating a particular kind of eligibility to drive depending on a relevant kind of instructor qualifications; possession of valid certificates on the lack of health and psychological contraindications to perform instructor activities; completion of a relevant instructor course (which has to be certified); pass an exam verifying qualifications before an committee appointed by a voivode; lack of specified convictions which follow from a legally valid court sentence; entry in a register of instructors.

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NOTES

¹ As far as the legal language is concerned (in the meaning of Polish *język prawny*), the lawgiver does not use the term ‘driving instructor’ (*instruktor nauki jazdy*), but simply “instructor” (*instructor*, the only one exception from art. 39 u.k.p. seems to be an omission). However, in daily language, people consonantly use the former version. To say just „instructor” would plausibly cause the following question: “instructor of what?”.

² One particular aspect of the reform should be quoted at the beginning for a clarity of the further narrative. In Poland, a driving training consists of a theoretical and practical part. In the times of p.r.d., both of them could be conducted by an instructor only. Today, under u.k.p., the lawgiver recognizes also a lecturer (*wykladowca*) as a person who can conduct lessons during a training, however, exclusively as far as a theoretical part is concerned. What is of importance, it does not change the fact that an instructor can still conduct lessons during a training in the scope of both theoretical and practical part.

³ When it comes to instructor-related matters, the nexus with an appropriate *starosta* is provided by a place of residence (*miejsce zamieszkania*) of a particular person, not by an address related to registration residence (*zameldowanie*).

⁴ In Poland, there are three kinds of self-government entities, which are, starting from the smallest: municipality (*gmina*), district (*powiat*) and voivodship (*województwo*). A *starosta* is an executive organ of the second of them. However, when it comes to a county capital (*miasto na prawach powiatu*), which is a special type of municipality, tasks of a *starosta* are performed by a president of the city.

⁵ For now, a registration fee has still not come into force. Under art. 138a u.k.p. it is going to be introduced from June 4, 2018.

⁶ It should be put *explicite* as a matter of accuracy: an exam cannot take place “beyond” an administrative procedure.

⁷ However, an administrative procedure can be relatively long even in such circumstances (e.g. if a file of a given person, who changed her or his place of residence, is possessed by the other *starosta*).

⁸ Article 33 par. 1 states requirements which has to be met not only to become an instructor, but also to keep this status. However, the article does not address ramifications of this second aspect.

⁹ Before this amendment (Novelization No. 10), it had been demanded to possess a secondary education (*średnie wykształcenie*).

¹⁰ Undoubtedly, this provision raises many questions. Why only health, not health and psychological, contraindications? An why only contraindications to drive vehicles, not to perform instructor activities?

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TRANSPARENCY IN PUBLIC LIFE. DRAFT ACT – NEW ANTICORRUPTION OBLIGATIONS

JAWNOŚĆ ŻYCIA PUBLICZNEGO.
PROJEKT USTAWY – NOWE OBOWIĄZKI ANTYKORUPCYJNE

Summary

The paper is devoted to the problem of fighting corruption in the public and private sector from the perspective of legal solutions adopted in the draft Act on Transparency in Public Life. The Draft Act will probably enter into force in the second half of 2018. And it will revolutionize the way of counter-acting corruption, the burden of which will be transposed onto the heads of the public finance sector units and the businessmen having the status of at least medium entrepreneurs. This essay aims to present the most probable consequences of the upcoming legal changes. The risks and opportunities resulting from the Draft Act provisions are shortly discussed in the text.

Keywords

corruption, combating corruption, transparency in public life, public administration, private sector, whistleblowing

Streszczenie

Artykuł podejmuje zagadnienie przeciwdziałania korupcji w sektorze publicznym oraz prywatnym z perspektywy rozwiązań przyjętych w projekcie ustawy o jawności życia publicznego w wersji z dnia 8 stycznia 2018 r. Projekt ustawy wejdzie najprawdopodobniej w życie w drugiej połowie 2018 r. i całkowicie zmieni sposoby przeciwdziałania korupcji. Obowiązek jej przeciwdziałania będzie spoczywał przede wszystkim na kierownikach jednostek sektora finansów publicznych oraz na średnich przedsiębiorcach. Artykuł ma na celu przedstawienie ewentualnych konsekwencji prawnych wynikających z projektowanej regulacji prawnej. Podejmuje także zagadnienie potencjalnych zagrożeń i możliwości z niej wynikających.

Słowa kluczowe

korupcja, przeciwdziałanie korupcji, jawność życia publicznego, administracja publiczna, administracja prywatna, informowanie o nieprawidłowościach

INTRODUCTION

In October 2017 the first publication of the draft Act on Transparency in Public Life took place (further as the Draft Act). The new legal solutions will be the answer to the obligation brought under the recent anticorruption strategy of Poland.

On January 6, 2018, pursuant to Resolution No. 207 of the Council of Ministers of December 19, 2017 (Resolution No. 207), the Government Program for Counteracting Corruption for 2018–2020 was established. The new anti-corruption strategy implements the obligation to carry out anti-corruption activities on a systematic basis resulting from the recommendation of the GRECO Group of States against Corruption, recommendations of the European Union and the Council of Europe, as well as the United Nations Convention against Corruption.

The strategy aims to strengthen the transparency and control of public processes and increase public awareness in the field of corruption as well as to coordinate the work of law enforcement agencies. The program provided for the introduction of a regulation on the protection of whistleblowers and implementation of compliance systems in public administration. The realization of this assumption are the Draft Act provisions.

The new program is intended to present a comprehensive approach towards corruption crime in the country, and at the same time precisely indicates the instruments for counteracting and fighting it, as well as better identifies the implementers of individual tasks. In the opinion of project promoters, the greatest threat of corruption exists in the spheres of the greatest co-activity of private economic entities and public institutions as well as at the meeting point of private money and public funds. The program is to ensure an effective fight against this type of crime – not only through repressive measures, but also the prevention and effective diagnosis of corruption phenomena. The new requirements resulting from the draft legislation are definitely an expression of mandatory prevention.

After publication of draft provisions in October 2017 the Draft Act was subjected to public consultations, which lasted only two weeks. Nevertheless many public and private entities filed the comments and remarks to the project. The second round of consultation was open for the public bodies only. Not many of the remarks were considered, while the next version of Draft Act was published on January 8, 2018. This latest version of the Draft Act is currently subject of works in the Standing Committee of the Council of Ministers. The act will according to public discourse enter into force in the middle of 2018. All the provisions of the act will become binding straight ahead, however for the entities obliged to develop and apply internal anticorruption systems will be granted the transition period of 6 months from the date of act's entry into force.

1. Corruption and Ways of Preventing It in Public Administration Under the Provisions of the Draft Act

Corruption is not any new phenomenon. The first historical remarks on combating corruption reach back to Antiquity [Taylor, 2017] and the historians believe that it intensifies extensively in the moments of great political, demographic, cultural or social changes [Buchan, Hill, 2014]. It is perceived one of the most problematic social issues. According to many studies Polish citizens find it a huge social problem and one of the biggest obstacles for the development of the sound administration of the country [CBOS, 2009].

Polish legal system harshly penalizes corruption however such provisions come not only from the Penal Code, but there are other types of corruption provided. The corruptive crimes may take place in sports and turnover of medicines either. Polish legislator noticed that although having so many anti-corruption provisions, they give a little of effect. Still Poles find public administration officials one of the biggest sources of corruption and almost 1/3 of Polish citizens thinks that there is no political will to combat it [CBOS, 2009]. Maybe in response to that legislators decided not only to penalize corruption, which visibly may not bring a desired effect, but to make prevention of it obligatory for all the units of the public finance sector.

As it is widely known that *praestat cautela quam medela*, the legislator decided to put the burden of application of anti-corruption means on the units themselves. To be precise on the heads of those units. Additionally to penalizing the corrupt acts the usage and adaptation of the internal anti-corruption systems will be obligatory under the Draft Act.

All of the units from the above mentioned sector will have to introduce “organizational, technical and personnel measures” (art. 68 of the Draft Act) to prevent from commitment of the crimes defined in the Draft Act. The crimes listed in the Draft Act are corruptive acts from three already binding Polish legal acts:

1. art. 228, 230, 230a, 231 §2, 246, 250a, 286, 296, 305 of the Criminal Code: venality, paid protection, abuse of function, bullying to obtain a statement, urging to vote, fraud, abuse of trust and disrupting the public tender,
2. art. 46 (1–4) and art. 48 of the Act on Sports: corruption in sport, influence peddling in sports,
3. art. 54 (1–3) of the Reimbursement law: corruption in turnover of medicinal products, special nutrition foods and medical devices which are subject to reimbursement.

While the purpose of the internal anti-corruption system of the public finance sector units is clearly described, the elements of it are not that obvious. Article 68 of the Draft

Act introduces an open catalogue of elements that constitute an internal anti-corruption system. These are:

1. identification of offices particularly endangered by corruption – the starting point for the proper implementation of the anti-corruption system is a precise risk-mapping. Conduct of an analysis of all the processes that take place within the organization, each department and office is crucial for the adjustment of the right preventive measures. Both insufficient solutions as well as overregulation of the internal compliance management system may result in decrease of operational effectiveness of the organization.

Upon the results from the risk-mapping the further procedures should be developed. The identification of the posts particularly endangered by corruption is important, as otherwise the procedures of conduct implemented in the organization would have to include every single employer, which would be unnecessary. There is an obvious difference between risks emerging in the work of a clerk having a direct contact with natural and legal persons whose cases he or she is deciding on and the risk occurring in the work of a receptionist or a security personnel. All of the posts should be certainly covered by the analysis anyway, nonetheless the positions of high risk exposure should be paid more attention. The final outcome of such an inquiry can be a well re-prepared organizational structure and the exact description of each post in the form of the exhaustive “job cards”,

2. trainings for employees regarding criminal liability for corruption – probably every organization has its own HR department dealing with the obligatory trainings for employees. Such a department takes care of preparation of standard trainings like work-safety and fire protection and runs the schedules of cyclic courses. Anti-corruption trainings could be included in the schedules like these or be part of a mandatory adaptation training, and then the training would be perfectly fitting the actual post the newly hired person would hold and respond to risk particularly connected with it. The form of trainings is not dictated. For some of the organizations which hire a big number of employees the conduct of training for everyone will definitely be a challenge. This is why every unit should choose the most effective way of organizing these trainings. Worth considering are definitely e-learning courses and online exercises. Each time the result of the training could be checked by the undertaking of the small test, examining the employees’ knowledge. That would also prove the effectiveness of organized trainings under eventual control,
3. anti-corruption code of the unit – each unit will have to develop such a code as a declaration of rejection of corruption that will have to be signed by every employee of the unit. Such declarations could be collected in the form of annexes to the employment contracts or as signing some kind of a collective letter,

4. “gifts and benefits” procedure – handing occasional gifts in business relations is a common practice. But even in the private sector the rules and approach towards this tradition become more and more strict under development of compliance and transparency culture. It happens that representatives of some companies handle the small promotional materials and gadgets to the public servants. However for the sake of total transparency each gift could and should be recorded in a dedicated Book of Gifts, with the description of exact circumstances of transfer of such a benefit. This can cause unnecessary chaos and misinterpretations, therefore more practical solution would be a total ban of acceptance of any kind of gifts. The first questions towards the opposite idea would be: “why would any person direct any marketing activities at a public servant? or how to differentiate the gifts and how to assess their value? or what kind of gifts are appropriate and which are not?” The simpler solution the better – an absolute prohibition of exchange of any gifts between public and private sector would be solving all the troubles in this field. Internal gifts exchange could be a subject of further analysis depending on the organization,
5. internal measures that prevent from making decisions based on corruption – the concept of these measures is not elaborated in the act itself. The measures will then have to be particularly designed for each organization considering its own risk-mapping and characteristics. One of the most obvious ideas is to strengthen, profile and grade the process of acceptance of decisions. Such process of making crucial decisions could be described in details and steps in the dedicated procedure,
6. internal procedure for informing the head of the unit about cases of corruption and procedure of dealing with notifications of irregularities – meeting these two statutory requirements (art. 68 (2) (6,7) of the Draft Act) is a good start for building the complex internal whistleblowing system. One of the biggest advantages of whistleblowing is the strengthening of control over the organization and possibility of quicker detection of irregularities and violations of law and internal standards. The biggest issue around whistleblowing is the problem of protection granted (or usually not) to the whistleblowers, who reporting on wrongdoing usually meet negative consequences and ostracism in their work environment. The provisions of the draft act in another part (Chapter 9 of the Draft Act) do try to deal with the protection of whistleblowers, but unfortunately they provide the protection which is granted externally by the public prosecutor, which in fact may contribute to fixing of the stereotype of a whistleblower as an “informer and snitch” that is already strongly rooted in Polish mentality as a heritage of the communistic past. This is why the legislator should rather emphasize the important feature of the well-functioning whistleblowing which is the possibility of an anonymous and confiden-

tial reporting with the strongest possible protection of whistleblower's identity. Legislator should also encourage to a constant improvement and upgrading of whistleblowing systems according to technical progress and opportunities it gives. The internal procedure of whistleblowing should cover the widest range of those entitled to notify which should not be limited to employees. An example of such form of whistleblowing system is the one introduced by The Polish Social Insurance Institution which allows everyone to report anonymously under a dedicated phone line and e-mail box. The procedure of dealing with the notifications filed by whistleblowers should address the concept of "a good faith" of the whistleblower, the procedure of granting the internal status of a whistleblower and the conditions for that and finally the scheme of informing the proper law enforcements authorities if the reported case considers a possibility of commitment of a crime.

2. "In Particular" – The Basic Elements of Anti-Corruption System in the Light of the Art. 68 of the Draft Act

Before the list of essential elements of a anti-corruption system is introduced, art. 68 of the Draft Act says that the head of the unit is obliged to "develop and apply" given elements, the list of which is preceded in the text of the article by the expression "in particular". This gives a rise to the concerns if the introduction of all the directly introduced elements will be enough for the organizations or units. It may also indicate that the proposed elements constitute a kind of an absolute minimum for the effective anti-corruption system. That would be true, considering the diversity of public finance sector units, the plurality of task they handle and the dissimilarity of risks their tasks-performance create. It is obvious that different kind of corruption risk would threaten a bank and a public university. The list of elements building the internal anti-corruption system can therefore be treated as a basic standard of measures that could be implemented in any kind of organization, no matter its type, tasks, functions and purposes it realizes. It may be seen as realization of one of the most visible European legislative trends, that somehow transfers the burden of risk-analysis on the entity that is obliged to apply the legal requirements in practice. It may be noticed on the example of GDPR [Regulation 2016/679] rules which force the data collector to adjust the protective measures to the kind of processed data and risks attached to the processing it conducts. It should be evaluated positively a it avoids the chance of the "overregulation of law", makes it easier for those who must meet legal requirements and possible to them to design the solutions that comply with the law but are at the same time "tailor-made" and perfectly suit the type of activity the obliged entity runs.

3. The Risks and Opportunities of Legal Solutions Adopted in the Draft Act

This kind of legislation however may give rise to some political battles especially on the level of local self-governments, which according to Central Anticorruption Bureau (further as: CBA) gather one of the most often pursued group of violators of anti-corruption provisions. For example the head of the district hospital could be politically dismissed from the post even if all of the statutory elements were introduced in the hospital, but the poviats management's commission decides that the anti-corruption system was not effective, as it for example did not allow patients to report in the anonymous way about doctors demanding bribes for performance of medical procedure, but the whistleblowing system was functioning exclusively for the employees and allowed notifying only the other way round. That kind of an open catalogue when it comes to "filling positions" in public finance sector may be a tool of political games and manipulation.

But aside to dangers it can actually be a good base for building some kind of sectoral standards. Considering specific corruptive risks in different types of units, the units themselves – separately or jointly – may design additional preventive guidelines to develop statutory anti-corruption systems in certain fields to strengthen or precise the proposed elements of anti-corruption systems. For example the Association of Polish Counties could develop the standards of effective trainings for employees of poviats offices, with educational programs dedicated to different kinds of clerks and other personnel, taking into account the specific corruptive risks connected with different types of post that are held in the offices, to make the trainings more effective. The Draft Act suggests that all the employees should be familiarized with the criminal liability for corruption, but such educational programs could and should be more complex. It should be conducted after the implementation of all the procedures regulating their work and should at first popularize the anti-corruption standards and procedures building the whole system in the unit, then promote proper behavior and in result show the liability for misconducts. It could be even supported by the great number of case-study workshops with the use of real cases from the sector, because as studied every third case pursued by CBA concerns the bribery of public officials on the local self-government level and the most commonly accepted bribes are the small ones. Clerks in local self-governments and its agencies accept money for settling a case, speeding up a decision, e.g. a building permit, issuing appropriate permits or certificates or even arranging a work admission [CBA, 2015]. Promotion of standards worked out in sectors or associations could have a real impact as built on the experience.

4. “Develop and Apply” – Why is It Not Enough?

The direct obligation of building the internal anti-corruption system comes in fact to two activities directly specified in the text of article 68 (1) of the Draft Act: develop and apply. These two steps used exclusively may be the source of ineffectiveness of the whole system. It is easy to imagine that the head of the unit creates the perfectly designed solutions in the procedures directly required by the Draft Act, however nobody from his or her employees is applying them in practice. As it is out of his or her ability to apply them all alone. The procedures of conduct are for the employees. The only way to check if they are well-applied is to monitor it through cyclic audits and controls. Such audits should be concluded by the dedicated internal commission, but even more desirably by an impartial, external entity. Periodicity of regular checks could be described in e.g. the anti-corruption code or (when building more complex system) in an additional audits and controls procedure, which could describe the rules of conducting such evaluations of functioning of the system.

The auditing practice is well-known and widely exercised in the well-developed countries and financial sectors world-wide. International standards provide guidance for establishing, developing, implementing, evaluating, maintaining and improving an effective and responsive compliance management systems within organizations, which anti-corruption systems are part of, and the compliance systems built upon these standards require introduction of auditing and checking regularity [ISO 19600:2014] to ensure the highest effectiveness of the system and its continuous functioning.

The audits and controls should be the final step, however there could be one more intermediate step identified in between “developing” and “application”, and that would be implementation. Private business knows the compliance systems far better than public sector and it has been building them for years already. Its experience shows, that it often happens that even at first glance ideally developed procedures, which consider all the potential risks according to previously detailed risk-mapping, are in practice completely unsuitable to the organization at stake. It may happen that the procedures are being developed by some external entity, which did not take a proper insight to the actual work environment of the organization or did not review the documentation of the organization well or created the procedures according to some basic template. Then or in many other possible situations involving simple mistakes in result the procedures are incompliant with the rest of the documentation or in some places even contrary to the rest of the internal management system and its particular parts.

This is why the implementation phase should always take place to make sure that the newly created anti-corruption system is fully consistent with the already worked-out

management system and other internal procedures. It should include the standardization and evaluation of the whole documentation new and already binding, newly created processes should be subject to cyclic employees training according to already functioning systems of personnel schooling.

Therefore the text of the provision provided in the article 68(1) of the Draft Act should be formulated according to the schedule:



Fig. 1: “Scheme of Activities connected with building of the effective anti-corruption system”.

Source: own elaboration.

Working according to these scheme and developing the anti-corruption system according to the highest international standards of compliance management systems and the sectoral guidelines designed within the areas of cooperation like national associations or inter-sectoral forums may influence the effectiveness of internal anti-corruption systems. Which is incredibly important from the perspective of the head of unit, as the only penalty provided in the Draft Act for the week anti-corruption system would be imposed on him or her.

The procedure of penalty imposition is presented in the article 86 of the Draft Act. It starts in the moment when the public prosecutor charges a natural person employed in the public finance sector unit with committing one of the criminal offences defined in the Draft Act (art. 68(1) of the Draft Act and listed already above). The charges themselves may initiate the control in the unit ordered by Chief of CBA. The purpose of the control is to check if the implemented procedures constituting the anti-corruption system of the unit are effective and applied in practice and if they are not ostensible. If the control reveals that there were no procedures implemented, or the implemented procedures were not applied or that they were ineffective or ostensible, then the Chief of CBA draws up the application for punishment for the head of unit and directs it to the criminal court. The court will decide over the amount of the financial penalty. The scheme of the penalty imposition is described in art. 86 and may be presented in such a way:

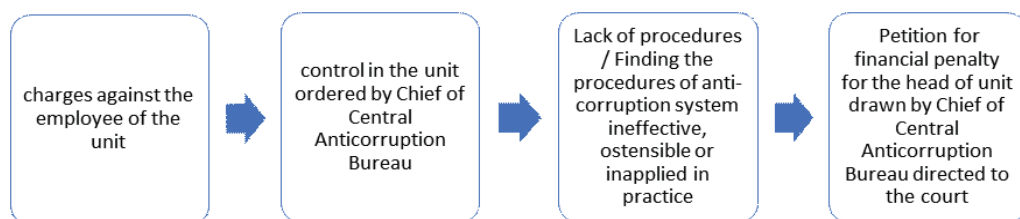


Fig. 2: “The procedure of punishment in public sector”.

Source: own elaboration.

The Chief of CBA may (but does not have to) depart from formulating the application for punishment, when the head of the unit informs the services before and the investigation was started upon that notification. Nevertheless this probably will not happen frequently, as the most of the corruption crimes is committed by the clerks of the lower rank and are not managed, directed or authorized by the heads of the units, what along with the lack of internal whistleblowing system result in the head of the unit being the last to know about the violations of law or internal standards.

In result the risk is huge as the commitment of the crime by any employee may already be understood as the expression of ineffectiveness of the whole system or its particular elements. The same with the charges which initiate the control at the very first place. The charges in the end of investigation do not have to be confirmed, therefore the whole criminal procedure may rely on the weak evidence, which would later on ignite the bigger controlling procedure. Again the provisions formulated this way can create an incredibly strong tool for political manipulations and games for every power as to the filling the posts in public agencies and dismissing those who do not “fit”.

5. The Draft Act and Central Anticorruption Bureau’ Competences Towards Private Sector

Worth mentioning is also the huge power attached under draft provisions to Chief of CBA. The act definitely strengthens the activities which a public servant holding this post will be entitled to conduct, which will go far beyond the current powers and authorizations. But the whole Bureau is going to be developed according to public announcements. CBA is going to prepare more workplaces and regular posts. It is going to take to the services around 500 new agents (which equals to ½ of the current number of agents) within two years and strongly increase the operational budget, which according to some calculations will reach 80 mln PLN more than presently. The budgetary enhancement will be devoted to modernization of equipment and upgrade of retrofitting

[Kacprzak, 2017]. CBA will take over some tasks of The Internal Security Agency such as protection of an economical safety of the country. Taking into account all of the upcoming changes, one might say that Central Anticorruption Bureau is going to become one of the most powerful agencies of the state. A kind of a super-agency.

Combating corruption occurring among public servants is one of the tasks that citizens appreciate the most and associate the Bureau's work with. However chastening the economic (so called "managerial") corruption is also an enormous part of Bureau's activity. Its meaning in this field is again highlighted in the Draft Act on Transparency in Public Life. The private sector will be obliged to develop organizational anti-corruption systems composed out of very similar elements as those, which must be implemented in public administration units.

Entrepreneurs who reach the status of a medium or big undertaking will fall under the scope of anti-corruption provisions and will be obliged to introduce the following tools:

1. avoiding the situations of creation the mechanisms that support corruption activity with the use of company's assets,
2. trainings for employees regarding criminal liability for corruption,
3. anti-corruption clauses to use in the contracts,
4. anti-corruption code of the company,
5. "gifts and benefits" procedure,
6. internal measures that prevent from making business decisions based on corruption,
7. internal procedure for informing the employer about cases of corruption,
8. procedure of dealing with notifications of irregularities.

6. Imposition of Penalty – Combination of Different Types of Proceedings in the Draft Act

The lack of such procedures, their ineffectiveness, inapplicability or ostensibility during the control initiated on the same reason as in the case of public finance sector units and conducted again by CBA will be punished with financial penalty. The amount of fine will be decided by the Chief of CBA and it will range from 10 thousand PLN to 10 mln PLN in the form of application for punishment with the description of the facts established during the control. For a CBA inspection to be conducted it will be sufficient that only corruption charges are raised against an employee or another person acting in the name or on behalf of that company – regardless of the final outcome of investigation and their confirmation or dismissal.

The entrepreneurs will have 30 days to pay the fine imposed on them since they receive the application for punishment and if they fail to meet this deadline the petition

for penalty drawn up by the Chief of CBA will be directed to the President of the Competition and Consumers Protection Office. Then such an application initiates the proceeding before the President of the Office, who imposes a penalty on the entrepreneur in the way of an administrative decision. The entrepreneur will then have a right to appeal the case to the court of competition and consumer protection.

The whole penalty imposition procedure is described in the art. 77 of the Draft Act and may be presented according to this scheme:

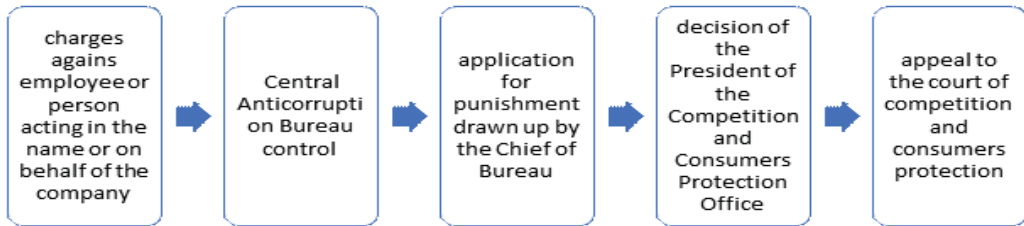


Fig. 3: “The procedure of punishment in private sector”.

Source: own elaboration.

The additional risk for companies leaning some part or most of their business on the public procurements is the automatic ban for competing and applying for a public contract aside the application for punishment. The ban will last 5 years and its result as an economic and reputational disadvantage is huge.

The same with President of the Office decision, as these are public and published on the webpage of the Competition and Consumers Protection Office. But the control itself may bear a risk of public relations losses. The information about conducted controls are sometimes being published on the CBA webpage and the draft provisions do not exclude such a possibility.

Another concern is a mix of two types of known legal proceedings. The whole procedure combines somehow both administrative and judicial procedures. It is a completely new form of procedure and the reason for engagement of the President of Competition and Consumers Protection Office is now known yet as it was not delivered by the authors of the Draft Act. The effectiveness of the newly introduced proceeding will be proved in practice.

7. The Draft Act – Global Standards in Combating and Preventing Corruption?

As already mentioned in the introduction the Draft Act was guided by many of the international organizations’ recommendations. But as to the form and elements of the internal anticorruption systems Polish legislator must have been inspired by the anticor-

ruption legislative global trends. An example from the European area may be the newest French weapon to combat corruption, which is the act called Sapin II. French legislation obliges large enterprises to introduce obligatory internal systems composed of the elements of prevention such as risk-mapping, trainings for employees or internal whistleblowing lines. Sapin II is said to be strongly influenced by the older acts of the similar characteristics that are American Foreign Corrupt Practices Act (FCPA) from 1977 or British Bribery Act from 2010 called the harshest anticorruption regime in the world, as the financial penalties there are unlimited.

The high financial penalties provided in the Draft Act are for sure inspired by the penalties that are being imposed under the provision of FCPA and that reach hundreds of millions of U.S. dollars. The recent Telia (Stockholm-based telecommunication company) case reached the record-breaking penalty of 965 mln \$ of the settlement agreement [U.S. DoJ, 2017].

Not only the high amount of penalties is the visible influence by the foreign legislations but another worth mentioning aspect either. It is the responsibility of the company (or organization) for the acts committed by its employees. Such a concept is introduced in all of three above mentioned foreign acts and was tried to be implemented in Poland under the Act of Responsibility of Collective Entities for Acts Prohibited under Penalty. Unfortunately the act may be called “dead” as it is almost absolutely not being applied in practice. The amendments to the act are in the governmental plans [Sobczak, 2017]. but the Transparency in Public Life Act will already revolutionize this area. In the three above mentioned foreign acts the liability of the company for the acts committed by persons employed in the company or authorized to act on behalf or in the name of the company is justified by the assumption that it was the organization that failed to prevent from commitment of a crime through not establishing the proper internal procedures and other organizational solutions such as educational programs, etc. This concept and kind of a legislative trend is definitely realized in the draft provisions when it comes to entities from both public and private sector.

CONCLUSION

Introduction of the new tools for prevention and combating the corruption if enters into force and is applied in practice, will most probably result in:

- increase of social awareness thanks to educational measures,
- strengthening of organizational prevention and counterfeiting the corruption “at its source” thanks to obligatory internal procedures and high penalties,

- strengthening of chastening the corruption thanks to granting wider authorization to the CBA,
- supporting the state budget with the influences from high financial penalties imposed on entities non-compliant with new requirements,
- development of the concept of company's liability for wrongdoing of its employees.

The most important question remains: will the upcoming legal changes influence the statistics and will the corruption phenomenon be more uncommon? The other effects of the Draft Act will have to be observed after its entry into force.

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ENVIRONMENTAL IMPACT CREATED BY PLASTIC BOTTLES. COMPARATIVE STRATEGY AIMED AT TACKLING PLASTIC BOTTLE WASTE

WPLYW PLASTIKOWYCH BUTELEK NA ŚRODOWISKO. PORÓWNAWCZA STRATEGIA UKIERUNKOWANA NA WALKĘ Z PLASTIKOWYMI ODPADAMI

Summary

Plastic bottles provide functionality, convenience and efficiency at a cost to the environment. These bottles end up in landfills or the ocean if not recycled. Legislation aims at tackling this problem by implementing Bottle Bills that provide economic incentive for returning bottles for either a deposit, tax or fee. Moreover, producers are expected to improve the design of bottles to ease recycling. However, requiring manufactures to market drinks in only reusable containers is deemed as going too far and interfering with the free market economy. Yet, the legislature does take interest in promoting resource conservation and resolving waste disposal issues. The solution could be by providing access to safe drinking water points throughout the city so that residents can refill their reusable bottle. An issue arises when the water network breaks and leaves a city to function solely on plastic bottles. Therefore, it is important to implement water purification technology into daily life to prevent such a crisis.

Keywords

plastic bottles, environment, environmental protection, the European Strategy for Plastics in a Circular Economy

Streszczenie

Plastikowe butelki są funkcjonalne, wygodne i wydajne, ale kosztem środowiska naturalnego. Jeśli butelki plastikowe nie zostaną poddane recyklingowi, wówczas trafią na wysypiska śmieci lub zostaną wrzucone do oceanu. Podejmowane są działania mające na celu rozwiązanie problemu plastikowych butelek poprzez ustanawianie przepisów dotyczących opakowań na napoje, które wprowadzają zachęty o ekonomicznym charakterze do dokonywania zwrotów butelek, np. kaucje, opłaty, podatki. Od producentów butelek oczekuje się podjęcia działań na rzecz projektowania takich opakowań, które będą ułatwiały ich szybki recykling. Jednak wymaganie od producentów wprowadzania do obrotu napojów tylko w pojemnikach wielokrotnego użytku uważa się za zbyt daleko idące żądania, zakłócające zasady funkcjonowania gospodarki wolnorynkowej. Ustawodawstwo zwraca jednak uwagę na promowanie oszczędzania zasobów i rozwiązywanie problemów związanych z usuwaniem odpadów. Wydaje się, że rozwiązaniem mogłoby być zapewnienie dostępu do bezpiecznych punktów wody

pitnej w miastach, aby ich mieszkańcy mogli wielokrotnie napełniać wodą butelki. Problem pojawia się wtedy, gdy następuje awaria sieci wodociągowej, a ludziom pozostaje korzystać z plastikowych butelek. Zapobiec temu może wdrażanie odpowiednich technologii oczyszczania wody.

Słowa kluczowe

plastikowe butelki, środowisko, ochrona środowiska, Europejska strategia w dziedzinie tworzyw sztucznych

INTRODUCTION

It is undeniable that plastics are common in daily life and vital for the economy. The global production of plastic has increased because it is convenient and efficient to use. Plastic bottles provide functionality but at a cost to the habitat because of marine litter, greenhouse gas emissions and our dependence on imported fossil fuels [American Chemistry Council, 2015]. The environmental impact of plastic beverage bottles is immense since most plastics are durable and degrade slowly due to the chemical structure that renders them resistant to the natural processes of degradation. The non-organic properties root the estimated time for a plastic bottle to break down up to 450 years [Vaughn, 2008, p. 23]. Therefore, it is necessary to take steps in order to limit the waste created by consumption of beverages from plastic bottles across the world. The United States have taken various measures to tackle the issue of plastic bottles waste.

1. EU Policy Instruments

The manner in which plastics are manufactured, used and discarded causes concern to the environment. Majority of plastic bottles are made from polyethylene terephthalate (PeT), a lightweight, shatter resistant, and recyclable material. However, in comparison to other materials such as paper, glass or metals, PeT reuse is low [Glennon, 2009]. Plastic water bottles are disposed by either recycling, returning the bottles for deposits, or throwing them in with general trash. The decision to recycle is affected by the opportunity cost of time and environmental benefit that the consumer derives for each bottle recycled. Stringent recycling laws increase the rate of recycling which will foster behavior to recycle. Both deposits and regulations in place increases recycling [Viscusi, et al., 2009]

The main catch is to actually have the general public collect, recycle and return the bottles so they are not disposed of in general trash and do not end up polluting the oceans or in landfills. Plastic in the ocean poses a risk of ingestion by sea birds, fish and marine animals. Scientist warn that this also harms humans, by eating seafood one can ingest those tiny pieces of plastic [Sands, 2003]. Intake of plastic can spur potential adverse health risk including direct toxicity, carcinogens and endocrine disruption.

The two principal policy instruments that promote water bottle recycling include bottle deposits and recycling laws. Legislation is implemented in efforts to decrease the environmental impact of disposing plastic products or packaging. Bottle deposits for plastic water bottles establish a financial incentive to foster recycling, while recycling laws generally encourage that behavior by reducing the time cost and increasing the convenience of recycling. In some instances, recycling laws may impose monetary penalties on failure to recycle properly [Viscusi, et al., 2009]. Recycling laws exhibit a range of policy stringency, from requiring local recycling to merely defining it as a goal.

A ban on bottled water in the United States concerning 23 national parks prevented up to 2m plastic bottles from being used and discarded every year [United States Department of the Interior, 2011]. However, the bottled water ban was reversed. This decision horrified conservationists while it satisfied the bottled water industry but the bill was flawed. One could not buy bottled water but was allowed to buy plastic bottled soft drinks. The reasoning being the bottled water is easily replaced with filtered or purified tap water in reusable bottles, while bottled soda or juice is not easily substituted in a similar manner. Therefore, reusable containers are the underlying goal in order to limit littering garbage into nature.

The European Strategy for Plastics in a circular Economy adopted in January 2018 aims to transform the method in which plastic products are designed, used, produced and recycled in the European Union (COM (2018) 28 final). The strategy, by improving the design of plastics will eventually raise the rate of recycling and thus boost the market for recycled plastics by enabling opportunity for innovation and competition. Therefore, this will contribute to the Sustainable Development Goals, the global climate commitments and the European Union's industrial policy objectives.

The EU Packaging and Packaging Waste Directive 94/62/EC aims at limiting production and promoting recycling, re-use and other forms of waste recovery. The scope covers all packaging in the European market and waste at all levels whether industrial or household. EU member states are to take necessary action in order to recover between 50% and 65% of packaging waste and to recycle between 25% and 45%, with a minimum of 15% for each type of packaging material. The Member States must take measures to prevent the formation of packaging waste and develop reuse systems reducing impact on the environment by introducing targets for member states to reach. Members differ considerably on the amount of packaging recovery, including plastics depending on length of integration with the program [Andrady, 2005]. Furthermore, manufactures need to indicate the nature of the materials used for the packaging to facilitate classification that will be compiled in databases for the recycling process.

Providing economic incentive to recycle has the potential to extend the capacity of landfills. Container deposit legislation entails the cost of a monetary deposit on beverage containers at the point of sale in order to ensure recycling [Andrady, 2005]. When the consumer returns the container to an authorized redemption center, the deposit is either partly or fully refunded. These bottles are then to be washed, refilled and resold. In the case in which the consumer does not claim the deposit, it could be either used to fund environmental programs or kept by the distributor to offset its costs.

A responsible policy in place to limit the waste of plastic bottles should encourage drinks companies to supply their product in multi-use, refillable plastic or glass bottles. These plastic containers can be refilled up to 25 times [Gleick, 2014]. Since fewer new bottles need to be manufactured, it can reduce the average CO₂ emissions per bottle in circulation. In terms of CO₂ output, it is more environmentally friendly to wash and sterilize existing bottles rather than producing new single use bottles. This system is a cycle in which the manufacturer fills for instance soda, beer or water into bottles that are sold to wholesalers or retailers. Either the wholesaler or retailer is responsible for paying a deposit to the producer. In the form of a surcharge, the deposit is put directly on the customer. The wholesalers have an extra step in the chain because the deposit put on to the individual retailers. End customers pay this deposit to the supermarket or whoever and returned to the consumer with the return of the bottles [Imhoff, 2005].

2. Comparative Strategy Aimed at Tackling Plastic Bottle Waste

In the United States, currently 10 states have so called “bottle bills”. The Oregon Bottle Bill was the first such legislation and is credited with reducing litter by increasing recycling [Gitlitz, et al., 2006]. Similarly, in California, the California Beverage Container Recycling and Litter Reduction Act imposes the deposit as applicable to plastic, aluminum, bimetal, and glass containers, including beer, malt, wine and distilled spirits, and all non-alcoholic beverages. The charge of \$0.05 refundable deposit on containers less than 24 fl. oz, and \$0.10 for containers 24 fl. oz. or greater. The redemption rate for PeT has totaled the return rate of 78% in the 1st half of 2017 [Morawski, 2009]. Whereas, In Hawaii, Deposit Beverage Container Program provided that the refundable deposit generated a total rate of 68%. Each State participating in such a program applies its own rate per container usually in a similar range [Vaughn, 2008 p. 50].

Delaware abolished its regulation and replaced it with the Universal Recycling law in favor of a non-refundable USD \$0.04 tax per beverage container sold. This only applies to non-aluminous containers that contain less than 2 quarts of a carbonated beverage and sales in which the beverage container are purchased by consumers for immedi-

ate consumption which are under control of the dealer. The exception applies to beverages sold at retail by non-profit organizations [Gitlitz, et al., 2006]. The Belgian system provides a voluntary deposit-refill and a mandatory tax on beverage containers that are not refilled. Those containers must meet the requirement of being usable at least 7 times and must then actually be refilled and show indication that it is refillable. The Ecotax 1994 aim to change the structure of relative prices in order to provide incentive to consume in an eco-friendly behavior [Andrady, 2005].

In Croatia in all beverages are covered in its Ordinance on Packaging and Packaging Waste to be subject to fees. The producer is responsible for paying a variety of fees when placing packaging on the market while the consumer receives compensation for return of empty containers. In addition, manufacturers are required to use all available technologies to produce reusable or recyclable packaging. In the Netherlands, PET bottles greater than 0.5L are subject to a €0.25 deposit for soft drinks and water. Excluded are all other beverage types, such as medical drinks, wine, spirits, etc. Whereas in Czechia, while glass bottles sold in returnable bottles carry a deposit there is not a deposit on other containers. In the other EU member states such as Poland a scheme for plastic bottles does not operate. Outside the EU, Switzerland actually abolished the idea because the recycling rate is high enough, even without deposit [ReLoop Platform & CM Consulting, 2016].

In Germany, according to the Ordinance on the Avoidance and Recovery of Packaging Wastes, the manufacturers are responsible for taking back the packaging of their products in addition to setting targets for refilling and recycling rates. Retailers were originally only required to accept the brands sold in the store. However, the law was amended to require acceptance of all containers made of the same material as containers sold [Morawski, 2009]. Now, stores with an area greater than 200 m² that sell drink cans, glass or plastic bottles are obliged to take back packaging of the material they sell from other drinks manufacturers. Single-use bottles such as cheap 6-pack of 1.5 liter mineral water bottles from the supermarket or products in 0.5 liter or 1.25 liter bottles which are single-use carry a higher deposit as a disincentive. Bottles purchased in specialist foreign foods market are exempt because import from wholesalers thus not subjected to German legislation on deposits [Fishbein, 1996].

In critical terms, the law may not be enough to give incentive to use of multi-use bottles. The price difference of 10 cents between single and multi-use bottles may not give motivation to the consumer to take the extra steps to deposit bottles rather than dumping it into the trash [Baumol, et al., 1971]. Yet, poor or homeless people supplement their incomes by collecting discarded bottles. Consumers may be more keen to return multi-use bottles when sold in crates which carry a higher crate deposit fee that will make it worth more while to return.

The Danish Bottles case [C-302/86, *Commission v. Denmark*] concerned a scheme that required manufactures to market drinks in only reusable containers approved by the national environmental agency which could be collected and refilled. The agency could potentially refuse the approval of new sorts of containers in the situation in where the container is not technically fit for the return system or the envisaged return system would not guarantee that a sufficient proportion of containers were actually reused [Sands, 2003]. Even after a modification to allow the use of a small quantity of non-approved containers, the European Commission brought proceedings against Denmark before the European Court of Justice (ECJ) to have both the compulsory deposit-and return system and approval system declared incompatible. It alleged the violation of Article 30 of the Treaty of the Functioning of the EU (TFEU) which prohibits quantitative restrictions on imports and all measures having equivalent effect' and was not within any of the exceptions listed in Article 36.

The European Court of Justice in its judgement recognized that rules for the protection of the environment could amount to a legitimate interference with free trade under the condition they were non-discriminatory between Member States and were proportionate to the objective. Nevertheless, the environmental objective of the Member State must be moderate [Jeppesen, 2002]. The Danish system which tried to achieve complete recovery of drink containers was excessive therefore could not be considered as a proportionate measure. If the system merely required deposit and return, it would have been permissible. Furthermore, the rules bore heavily on non-Danish drink producers who would also have to adapt. Therefore, the EU Member States were unable to set their own level of environmental protection. In addition, only minor interferences with the internal market would be accepted for the cause of environment protection [Wold, et.al., 2011]. Consequently, only in narrowly defined circumstances, can legal protection of the environment be allowed in the balance of interests.

The *Minnesota v. Clover Leaf Creamery Co.* (449 U.S. 456) case concerned a statute which prohibited the sale of milk and milk products in non-refillable and non-returnable plastic containers in order to promote conservation of resources, ease solid waste disposal and conserve energy. Which rose the question whether the Minnesota statute violated the Commerce clause of Article 1 or the Equal Protection clause of the 14th Amendment. The court maintained that the statute was not unconstitutional by acknowledging that the state legislature had an interest in promoting resource conservation and resolving solid waste disposal issues. Whereas, the disparity between non-reusable plastic containers and paper or reusable plastic containers was rationally related to the purpose of the legislature [Ducat, 2013]. Therefore, it proved not to be unconstitutional under the rational basis test set forth in *New Orleans v. Dukes*. There was no violation

of the commerce clause since the statute banned sale of all milk in the specified container and did not distinguish by seller.

As can be seen from the case law of the Court of Justice and the Supreme Court, important trade issues arise in the area of waste. The constitutional implication of a bottle recovery structure in order to recycle. The requirements that the arrangement set for essentially a prohibition for producers of beverage containers. This change could give rise to an increase in transportation costs, higher administration fees and challenge for logistics. The court must balance the environmental and trade interest against each other. Balancing provides a method for reconciling legitimate interest in the environment with free trade value. However, only economic analysis can show the benefits and the burden of such a policy.

Those in favor of such restrictions have also argued that such restrictions are necessary to give proper incentives to all states to develop adequate waste disposal facilities within their borders rather than to rely on facilities located in other states for waste disposal. Those opposed to such restrictions have generally view them as highly inefficient. It is dependent on the extent states should be authorized to impose restrictions on the exports of their own waste to other states. Although the states imposing such restrictions have sometimes claimed that they are necessary to protect the environment of other states, restrictions on the exports of waste are, however, generally motivated by economic considerations, such as ensuring the profitability of local waste-processing facilities.

The use of reusable bottles and the possible option to fill it up at stations, water fountains, or food establishments would be a simple environmentally friendly solution. By 2021 shops, cafes and businesses in the United Kingdom would offer free water refill points in every major city and town. Water UK claims that this scheme could potentially cut disposable plastic bottle use by tens of millions each year [BBC, 2018]. Most places in the US, either have water fountains, or you can ask any place for water and they will give it to you for free or use the sink if its work. Access to clean water enables one to not depend on plastic water bottles to satisfy thirst.

It is imperative to have access to safe drinking tap water in order to reduce the impact of plastic water bottles. In the United States, tap water and bottled water are regulated by different federal agencies. While the Food and Drug Administration (FDA) is responsible for regulating bottled water, the Environment Protection Agency (EPA) regulates tap water. The EPA's stricter policies require that incidents of tap water contamination shall be reported to citizens. Whereas, there is no such rule in response to bottled water by the FDA [Glennon, 2009, pp. 103–105]. Improper bottling procedures and storage procedures can cause bacteria in bottled water to multiply and yet is sold as a healthy water source.

Flint is an ongoing crisis with a continuing lack of access to water. Due to infrastructure damage, citizens face public health risk as they are reduced to relying on plastic water bottles for everything [Campbell, 2016]. When Flint changed its water source from Detroit Water and Sewerage Department sourced from Lake Huron to The Flint River the officials failed to apply corrosion inhibitors that led to lead contamination in the pipes. The elevated levels of heavy metal neurotoxin in drinking water caused health problems mentally and physically. The water was responsible for the outbreak of Legionnaires disease that left 10 dead.

Residents who claim the agency has mismanaged the crisis that exposed them to lead poisoning are suing the EPA in a class action lawsuit. The plaintiffs claim the EPA failed to warn of danger nor take steps to address the crisis at hand thus seek damages. All levels of government including local, state and federal failed causing residents to face a public health state of emergency [Clark, 2018]. Former emergency managers and water plant employees have been charged with felonies. The EPA enacted a Safe Drinking Water Emergency Order, which allowed it to more closely monitor and control the state and local response efforts. These efforts include rerouting the water supply, replacing corroded water pipes and distributing bottled water and filters.

To ensure the health and safety of the Flint residents while the pipes are being replaced the solution is to use water from plastic bottles rather than from the tap. These plastics quickly pile up since people are forced to use bottles for drinking, cooking and bathing. In order to carry on with life, 102,000 citizens use 200 bottles of water each that equals to 20.4 million 16oz. bottles of water per day, every day, until this problem is fixed in the next years. Millions of bottles of water donated in a goodwill gesture that led to unintended consequences. Bottled water is not only an expensive solution for such a wide spread problem, but also creating an environmental problem. Those discarded water bottles then need to be either recycled or end up in the landfill. Flint is drowning in empty bottles in an unsightly bottle buildup.

While the pipes are in the process of being replaced, residents are encouraged to use water purification filters. The governments are now realizing that bottled water is not the solution for water related disaster. Even the military is looking for alternative options. The HydroVolt portable filtration machines uses a process that involves carbon, ultraviolet light, and reverse osmosis to provide ideal drinking water or for any other needs. The units can filter as much as 7,000 gallons of water a day for a fraction of the cost of a case of bottled water without the plastic waste [Takepart, 2016]. Now officials claim lead in water is well within standard and have cut federal aid to supply bottles leaving citizens hesitant to use the water. The state supplied water purification filters and water filters at distribution points across Flint as part of a \$450 million state and federal aid package.

It is vital that one is prepared for any such water calamity needing plastic water bottles for survival with a water purification equipment.

CONCLUSION

In conclusion, water is vital for life, which can be obtained in convenient to use plastic bottles. Not only does this durable PeT supply water but any type of liquid beverage. These bottles however will then end up polluting earth in landfills or the ocean if one is not conscious what happens to the waste. Legislation aimed at recycling can tackle this problem by implementing Bottle Bills that provide economic incentive for returning bottles. In addition, producers are expected to improve the design of bottles to ease recycling. However, requiring manufactures to market drinks in only reusable containers is deemed as going too far and interfering with the free market economy. Yet, the legislature does take interest in promoting resource conservation and resolving waste disposal issues. The solution could be by providing access to safe drinking water points thought the city so that residents can refill their reusable bottle. An issue arises when the water network breaks and leaves a city to function solely on plastic bottles. Therefore, it is important to implement water purification technology into daily life to prevent such a crisis.

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ADMINISTRATIVE BACKBONE OF THE INTERNATIONAL CRIMINAL JUSTICE

ADMINISTRACJA JAKO KRĘGOSŁUP MIĘDZYNARODOWEGO PRAWA KARNEGO

Summary

The goal of this paper is to underline the necessity of a strong administrative backbone within the International Criminal Law regime. Often an overlooked phenomenon in the ICL, the administrative endeavours of various Tribunals provide not only an excellent ground for comparative analysis but also a fresh, fascinating perspective on the entirety of the administrative law. The depth to which it saturates other fields of law, and the very noble ideals behind this commonly disregarded field of law. Within this paper an introduction to the International Criminal system will be made, with emphasis on its various administrative realities, and further analysis of the function of the International Criminal Courts administrative branch as an example of excellence in the field.

Keywords

international criminal law, administrative law, international administrative law, legal theory

Streszczenie

Celem artykułu jest uzasadnienie konieczności budowy silnych struktur administracyjnych w systemie międzynarodowego prawa karnego. Aspekt ten jest często pomijany w trakcie analizy systemu prawa karnego międzynarodowego. Niemniej jednak działania międzynarodowych trybunałów karnych pozwalają w sposób nowatorski spojrzeć na funkcje prawa administracyjnego i jego relacji z innymi dziedzinami prawa. Prawo administracyjne funkcjonuje w głębokiej, ale często niewidocznej symbiozie z prawem karnym międzynarodowym, pozwalając jego organom na wypełnianie swojej misji w sposób efektywny i w zgodzie z rządami prawa oraz przyjętymi normami pracy trybunałów. W artykule zawarto charakterystykę systemu prawa karnego międzynarodowego w ujęciu administracyjnym oraz dokonano analizy funkcjonowania Międzynarodowego Trybunału Karnego, który stanowi przykład jednostki sądowniczej z silnym i rozbudowanym systemem administracyjnym.

Słowa kluczowe

międzynarodowe prawo karne, prawo administracyjne, międzynarodowe prawo administracyjne, teoria prawa

INTRODUCTION

“Injustice anywhere is a threat to justice everywhere.” This quote by Dr. Martin Luther King Jr. is a testament to the necessity of a uniform, global stance against certain, insurmountable violations of law. In a classical legal theory, a sovereign State bears an ultimate responsibility for the exercise of justice over its citizens. In such an exercise there is no greater ally for the judicial system of a State than well-functioning administrative machine, allowing not only for swift, legal and proper exercise of justice, but also maintaining a necessary degree of impartiality for the agents of the State involved in the dispense and maintenance of justice [Locke, 1690]. This clear necessity for strong administrative background, allowing for a function of justice within a State can be easily observed in the failed States. Collapse of States such as Yugoslavia, Rwanda or Somalia has begun with the abuse of power by the public officials, who in their exercise of State authority had forgone the principles of good administration and governance. This collapse of the administrative backbone has in turn led to a corruption within a criminal system, where willingly or not, the judges and prosecutors were unable to carry out their tasks, due to their inability to entrust the systemic foundation which ideally should guarantee their freedom to act in an unbiased and safe manner. Such abandon for the underlying principles of governance inevitably results in a power vacuum, which in the worst case scenario, as it has happened in Yugoslavia, leads to an armed conflict [Bucheister, 2012]. A notable example of this process could have been observed in the 1993 Yugoslavia, where the United Nations Security Council, has decided to install an outside, Hague based judiciary Tribunal [United Nations Security Council Resolution 827] (hereinafter referred to as the ICTY) as a supreme legal body of a State, due to the inability of local courts to act in an impartial manner. Thus, whilst the overarching purpose of the ICTY was to provide justice for victims, and punishment to the perpetrators of Yugoslavian War, the initial necessity for its creation and continued operation can be traced all the way to the diminishment of the administration within the State, and consequentially collapse of fair and just dispense of state authority.

1. International Element

The above example illustrates the crux of the titular problem. Conflict which due to its scale, severity or potential consequences provokes an international response will often see a complete or partial collapse of local governments’ effective control over the state. In such scenario the now defunct judiciary branch will be replaced by an artificial one, which provokes an entire host of administrative problems that must be dealt with.

The branch of international law – international criminal law (hereinafter referred to as the ICL) is the regulatory body concerned with the resolution of said instances of judicial vacuum [Cassese, 2004]. Being a relatively new, and revolutionary body of law – normatively dating back to the Nuremberg Trials of 1945 [The London Charter] and only recently having been “modernized” [Alter, 2012] with the advent of two *ad hoc* Tribunals [United Nations Resolutions 827 and 995] (ICTY and International Criminal Tribunal for Rwanda¹ [Hereinafter referred to as the ICTR] respectively) and the International Criminal Court [The Rome Statute] [hereinafter referred to as the ICC]. Having been described as fluid and evolving, this body of law provides for an incredibly interesting analysis from an administrative perspective due to both its procedural intricacy and the international element, which dictates both certain limitations and prerogatives over its subjective organs and institutions (for the sake of brevity, this article will not devolve into historical analysis and will only deal with the “big three” of the modern ICL – ICTY, ICTR and the ICC). This international aspect of administrating such an institution is largely political, due to the necessity of coordination and continued support of the party States. Due to the “soft” nature of international law, there (normally) can be no expression of sovereign authority which results in a very horizontal model of relations. In practice there were two main areas of conflict amongst the involved parties – checks and balances and logistics – both of which at their core can be resolved by a combination of good administration and administrative overview. The first issue manifested itself during, and post creation of the *ad hoc* Tribunals, and during the Rome Conference [Drafting of the Rome Statute of the ICC]. Due to the technically universal jurisdiction (within the confines of their mandates) of the ICL Tribunals, the States involved were afraid of seceding too much of their sovereign power to the Courts. First instance of such outrage can be observed in the critique of the ICTY’s mandate. The Tribunal has been established by the virtue of Security Council Resolution 827, instead of a treaty and thus was quoted as “manifestly illegal” for violating the principle of law providing that the courts must be established by the law. Those voices of concern were addressed in a Prosecutor v. Tadic, Decision on Jurisdiction case, where in a bizarre turn of events, the Tribunal was tasked with establishing its own legitimacy and jurisdiction. Furthermore the appeal’s chamber has declared that due to the unique, international nature of the Tribunal, and special circumstances concerning its creation the apparent violation of the principle of law was justified, and in turn the ICTY was manifestly lawful institution, operating within the confines of the rule of law principle [Cassese, 2013].

Such precedent may be shocking within a traditional legal theory. After all, in a municipal setting it seems inconceivable for a court, i.e. Supreme Administrative Court of Poland to debate the question of its own legitimacy. Public law, checks and

balances, administrative overview alongside with the proper procedural regulations allows the State to install a degree of mutual control and assuredness within the boundaries of its legal system. However in the ICL theory there exists no readily available solution. The process of drafting the constituent documents, highly scrutinized as it was, can only happen after all of the involved parties have been satisfy [Bellelli, 2010]. In other words the ratifying States must be ensured that the Tribunal will be administered properly, and carry out its mandate dutifully. To this end the *ad hoc* Tribunals were created with strict limitations placed upon their mandate, limiting them only to their respective, immediate surroundings. And only after the special committee of experts designated by the United Nations (hereinafter referred to as the UN) deemed their existence as justified in light of the scale of atrocities committed in Yugoslavia and Rwanda [Cassese, 2009]. Furthermore, in order to facilitate efficiency and independence, instead of creating another supervisory body for the Tribunals, the SC has drafted a lengthy and incredibly detailed Rules of Procedure and Evidence, which further supplemented the clarity with which the administrative side of things were to be undertaken in the future Tribunals [Statute of the Tribunal]. Having breached the initial, legal, issues the more immediate concerns became of the logistical nature. Such an unprecedented and major undertaking has been a costly one, both financially and in human resources. One of the most prevalent and major points of critique towards the *ad hoc* Tribunals concerns its administration of resources. To an extent where any future endeavours in creating such an institution were vetoed by China during the SC meeting, as fiscally unbearable. In order to facilitate those concerns the UN had to, again, seek administrative solution to the criminal law institution which resulted in the two Tribunals (ICTY and ICTR) being “effectively joined at the hip” [Shabas, 2004, p. 12]. The tribunals shared their Prosecution, Appeals Chamber, and parts of the clerical staff. Those financial shortcuts, however have taken their toll, provoking another host of accusations towards the quality of judgements, which unsurprisingly dealt not with the legality but the logistics of thereof. The ICTR has been criticised for lengthy proceedings, multiple delays, major difficulties in translation of Kinyarwanda into English and French, the logistical mistake of separating the Tribunal from the Prosecution geographically and finally the treatment of victims [Cryer, 2010]. Such failures, clearly, can and should be attributed to poor administration and lack administrative oversight, rather than an error of law. Had the Tribunal worked in a municipal setting fixing those issues would have been simple enough (albeit costly and time consuming), whereas due to the international nature of its mandate even the smallest revision to the administering of the Tribunal became a Gordian knot of criminal procedural, administrative and public international law. This intersection, while ineffective at times bears ground for a very

clear and often overlooked outline of how the administrative law serves as a backbone for any institution and endeavour and transcends its boundaries.

As noted previously the International Criminal Law suffers from lack of proper executive branch, which normally would be tasked with ensuring the governance and administration of its subjective organs. This particular legal field, even more-so than other branches of international law shows a resonating need for a developed (at times overtly so) system of checks and balances, *in lieu* of traditional Montesquieu system. The issue becomes even more jarring when the focus is shifted from the *ad hoc* Tribunals to the ICC. While a host of arguments were made against their mandate, one conclusion remained throughout and throughout, the gravity of Security Council decisions utilized in their creation has allowed the Tribunals to operate with relatively minimal resistance. The existence of superior institution with established mandate of rights and duties allowed for this “external” control to become streamlined in an already developed political and administrative processes, and focus the Tribunals on fulfilling their judicial mandates.

In case of the ICC the process becomes infinitely more convoluted. While it is true that the Court has been created with the weight of the UN support and developed on the foundations provided by the work of the *ad hoc* Tribunals, there now exists a jarring void in place of the unified support previously ensured by the SC’s authority. This obstacle is most famously illustrated by the Permanent Five Members continued resistance to the ICC’s position as supreme judicial body of the field. This hard headed approach of ICC’s potentially most potent allies is rooted in the aforementioned problem of State’s reluctance to part with their sovereignty over criminal process, and went as far as the US threatening acts of aggression in case of arrests [Human Right Watch].

The entirety of existence of the ICC is deeply rooted in the soft law premises, enforced by the sovereign equality of the international law [Cherif Bassiouni, 2008]. While justified and understandable this system carries over very poorly into the realm of criminal justice, where an exercise of independent (where such independence and autonomy results in fairness and unbiasedness rather than abuse) authority is a necessary component of any operations. Apart from the strong recognition of an existing legal theory, practice, principles and its own limitations this unique nature of the ICC requires more than anything, crystal clear administrative practice. Not a single dollar can go uncounted, each action must carry a proper administrative justification and all members from clerical staff to the prosecutor stay strictly within their mandate. Otherwise the repercussions, which normally would range from fiscal penalties, to relegation of staff will instead take on the potentially existence threatening proportions. The delicate net of support achieved by the ICC is under a constant threat of failure, especially given the negative stance of powers such as the US or China towards its operation. While on the surface this prob-

lem might seem of little relevance to the administrative law theory, when barred from the idealistic philosophy so often associated with the ICL it pragmatically becomes a very administrative issue.

Putting aside the ICC's "mission" for a moment, the Court, practically speaking is an international organization with a special mandate. Foremost of all the IO's are judged by their continued usefulness, which is derived from their effective fulfilment of their constituent goals. While it always remains so, that those particular goals are of a certain, special, nature, the operative word is "effective". The ICC can only exist for so long as there exists a consensus that no other subject of international law may fulfil its role with a superior capacity. Therefore the question of ICC's continued survival becomes one related not to the number of indictments it produces but to the economics of its operation. The effectiveness with which the Court's human resources departments operate translates to the quality of judgements, the effectiveness of the accountants results in better logistics capabilities, which in turn provides victims with higher standard of protection, more skilled translators and ultimately freedom to testify, etc. While on the surface the ideals of the Court always remain the most prominent, in the very pragmatic, practical reality the Court is an institution expected to manage itself in an exceedingly strict manner, thus instead of deluge into the morality and necessity of its mission it can be reasonably assumed that the majority of supporting States are interested in results. Results which are born of effective management of available resources, an issue which the administrative law is the most appropriate and effective tool to ensure.

2. The Registry of the ICC

Having illustrated to external factors motivating the need for the Courts excellence in its administrative functions, its internal practice may be observed. The Registry is one of the two main organs of the ICC, alongside the Office of the Prosecutor – dedicated to legal operations of the Court. The Registries task is to ensure such operation and make possible fulfilment of the ICC's judicial mandate. As such the Registry is provided with a wide range of duties and privileges enumerated in the Article 43 of the Rome Statute. Above all the Registry serves to provide all non-legal needs of the Courts and enable the work of judicial chambers and prosecution, through "judicial support, external affairs and management" [ICC Website].

Those three blocks hide a deceptively extensive network of tasks, all of which are crucial to the operation of the Court. It is within the Registries mandate to manage the court proceedings, records, translation, witnesses, investigators, support counsels, main-

tain inductees, manage public relations and outreach, provide onsite security, budget and relegate human resources [ICC Website]. This titanic list of tasks is further deconstructed in the Regulations of the Registry [The Rome Statue of the ICC], itself an 81 page manual on good governance and management of the Court. This attention to detail, necessitated by the aforementioned factors is not only the very highest level of administrative ordinance, but also a cumulative effect of over 20 years of constant development of an unprecedented field of law. The ICC makes a constant point to learn from the mistakes of its predecessors, and continues to maintain its record of excellence in normative and substantive framework surrounding every aspect of its work.

At the head of the Registry stands the Office of the Registrar, who must be a person of highest moral character and qualifications. (Current Registrar, Mr. Peter Lewis has, amongst others, served as the Chief Executive of the Crown Prosecution Service and was the UK delegate to the UN Preparatory Commission for the Rules of Procedure and Evidence of the ICC [see: The Registrar]. Furthermore the positions authority is ensured by the election procedure, which consists of an election through the absolute majority of the Judges through a secret ballot. The Registrar acts directly to the President of the Court, which entails responsibility only to the very highest authority of the ICC, and as a head of his respective office enjoys complete authority and freedom in the performance of his or her tasks [see: ICC Structure and Officials]. This high reverence relegated to the often overlooked administrative arm within the Court again illustrates the constant necessity of strong administrative mechanism in the ICL. While, as numerous mentioned through this paper, this approach is consequence of political reality in which the Court operates, a more optimistic motivation must also be mentioned, one which underlines another façade of the administrative law. It is often the case in the public's eye to view the administration as a soulless machine, a mechanism of control born of Orwellian vision. However the ICC's administrative arm proves that it is not the case. At the heart of the Courts Registry lies not need to control but help. This strict enforcement of rules and procedures is also born out of the gravity of the ICC's mission. The work of the Court involves matters of the most serious nature, each case an unprecedented disaster, a blood stain on the human history. With such monumental weight bearing down on the Court, the Prosecutor and Judges need hold themselves to an even higher standard than their municipal counterparts. The cases adjudicated in the Court deal with the very worst of what the humanity has to offer, there can be no room for error or else the exercise of justice will be undone. It is the role of the Registry to ensure that the accused are adjudicated in a manner that leaves no loophole, no procedural mistake that would allow them to defy the system and walk free, barring the victims the single modicum of re-prieve in this form of legal restitution.

CONCLUSION

Duality. This single word can perhaps illustrate best the function of the administrative law within the field of ICL. On one hand it can be viewed as necessity enforced by the less than perfect political system, where ambition of States takes precedent over the exercise of justice. On the other however, this motivates constant growth and stride for excellence, unseen in many other fields. The constant pressure from the outside agents that is placed upon the ICC as it was previously place on the *ad hoc* Tribunals, forces those institutions to adapt and maintain a constant track record, which in the end benefits those who the entire system was created to protect – the victims. With that in mind there must be no doubt left of the unsurmountable role that the administrative law and administrative principles applied to ICL practice play. The man and women of the Registry should, rightfully so, be hailed as the unsung heroes of the ICC and ICL as a whole, for it is their work first and foremost that allows the more specialised elements of the field to operate at all.

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NOTES

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AUTONOMOUS VEHICLES: THE LEGAL LANDSCAPE OF USING AND TESTING AUTONOMOUS CARS IN POLAND

POJAZDY AUTONOMICZNE: UWARUNKOWANIA PRAWNE UŻYTKOWANIA I TESTOWANIA POJAZDÓW AUTONOMICZNYCH W POLSCE

Summary

Due to expected benefits of mass-use of the autonomous vehicles, specialists in many fields are trying hard to overcome all barriers related to the development and planned spreading of this way of transport. In fact, technology allows to use autonomous vehicles for years, but the real barriers to their mass-use are sociological and legal problems, which are much harder to overcome. The purpose of this paper is to analyze the amendments to the Polish Road Transport Act, which introduce the legal definition of an autonomous vehicle and defines the conditions for using and testing the autonomous vehicles on Polish public roads. This text is a brief characterization of current understanding of autonomous vehicles and it points out the sociological and legal barriers that exist on the way to their widespread use.

Keywords

autonomous vehicle, legal barriers, technology

Streszczenie

Wokół nas pojawia się coraz więcej pojazdów autonomicznych. Istnieją jednak bariery natury prawnej i społecznej, które uniemożliwiają wykorzystywanie ich na szeroką skalę. Artykuł stanowi próbę analizy znaczenia pojazdów autonomicznych i wskazuje na społeczne oraz prawne bariery, jakie istnieją na drodze do ich powszechnego używania. Są one niejednokrotnie trudniejsze do pokonania w porównaniu z przeszkodami natury technologicznej. Biorąc pod uwagę rosnące znaczenie pojazdów autonomicznych, autor artykułu zwraca uwagę na zmiany ustawy z dnia 20 czerwca 1997 r. Prawo o ruchu drogowym, mocą których wprowadzono – między innymi – prawną definicję pojazdu autonomicznego oraz określono warunki używania i testowania pojazdów autonomicznych na polskich drogach.

Słowa kluczowe

pojazd autonomiczny, bariery prawne, technologia

INTRODUCTION

In brief, we stand on the verge of a change in transportation technology and cars that move on the road without a person behind the wheel become a reality. Now we can observe rapid autonomous cars technology development which is going to radically change transportation. Advances in vehicle technology with an increased use of sensors and faster computer processing in vehicles have enabled ever-increasing levels of functions to be controlled by the vehicle, rather than the driver. The main reason for the development of autonomous cars is to increase road safety and reduce fatalities on the roads. Statistics show that human errors cause 95% of accidents in the United States [Schroll, 2015]. According to Global Status Report on Road Safety 2015 published by World Health Organization [Who.int, 2018] 1.25 million people are killed each year on the world's roads, and that this figure has plateaued since 2007. Road traffic accidents are a leading cause of death globally, and the main cause of death among people aged between 15 and 29 years. It is also recognized that road traffic injuries place a heavy burden on national economies and households. This are the reasons why driving is actually a very dangerous activity. Researchers believe that developing the autonomous cars technology really gives us a chance to dramatically reduce car incidents that are caused by human error. In a widely cited study "Automobile insurance in the era of autonomous vehicles", audit company KPMG estimated an 80% potential reduction in accident frequency per vehicle by 2040, resulting in roughly 0.009 incidents per vehicle [Kpmg.com, 2018], which would save thousands lives each year and avoid millions of injuries on roads. As Bob Lutz, former General Motors vice chairman, told during the interview given to CNBC Monday on 8 September 2014 "The autonomous car doesn't drink, doesn't do drugs, doesn't text while driving, doesn't get road rage. Young, autonomous cars don't want to race other autonomous cars, and they don't go to sleep." [Cnbc.com, 2018] Beyond safety, there are some other advantages to the technology, including providing mobility to seniors, persons with disabilities, visually impaired persons, and others who cannot currently drive. Another advantage of autonomous cars is also increasing the efficiency of people who spend long stretches of time on the road. Experts also point out broader societal benefits, including easing traffic congestion, moving people to destinations more quickly, better land use in cities by the elimination of parking lots and garages, convenience and saving time. The obvious benefit is also to conserve fuel more efficiently than the average driver by vehicle control systems that automatically accelerate and brake with the flow of traffic. Reductions in fuel consumption, of course, yield corresponding reductions in greenhouse gas emissions.

Although autonomous cars are being designed to save lives with many safety features, there are many different problems in various field related to the introduction of autonomous cars on the market. There are ethical problems, for example the issue of vehicle programming in borderline situations – whether in the event of an inevitable collision, the vehicle must at all costs protect the passengers or the driver, or should it seek a solution that minimizes the negative effects of the accident. There are also economic problems related to the profitability of production of such cars (for example in connection with the expected changes in the ownership structure that will result in a reduction of the number of vehicles operating on the market), the problem of growing unemployment among professional drivers (taxi drivers, truck drivers, carriers), issues of investments in public transport or intelligent road infrastructure. But in fact, the legal barriers are the main obstacle to mass-market sales of autonomous cars and trucks. There are different legal problems related to using and testing autonomous cars on public roads. For example, ownership problems with anticipated spreading car-sharing and carpooling, issues of road traffic law and related liability, issues of criminal law, security issues (especially regarding to avoidance of possible hacker attacks on autonomous cars), privacy issues (regulation of collecting data about the users and their current location), or finally, the issue of civil liability. The use of such cars will span various areas of the law including torts, insurance, privacy, data security, transportation and communications administrative law. It is obvious that autonomous cars also may crash and product liability litigation is inevitable. Autonomous cars are already tested on public roads, and for that reason the need to look at the using of these cars from the law point of view becomes more urgent. National law needs to be changed in order to accommodate autonomous cars, because the legal issues will arise in many areas of the law, and the legal aspect of autonomous cars and the way of solving legal problems on this matter is in fact the main challenge for humans now. In fact, legal and sociological barriers to autonomous cars are even greater than the technological challenges.

1. What are the Autonomous Cars?

The characteristics of the legal landscape of using and testing autonomous cars in Poland must be started with the definition of an autonomous vehicle. Different countries and different companies are using various terms to describe these new technologies, including “driverless”, “self-driving”, “automated”, “robotic” and “autonomous” cars (also vehicles) [Fagnant, Kockelman, 2015; Thrun, 2010]. It is worth noting that the word „autonomous” is in fact not completely correct. It suggests that autonomous car is an independent system, which is not actually true [Schellekens, 2015; Walker Smith,

2014]. There are two types of autonomous vehicles described as communicated or not communicated. Not communicated autonomous cars use for automated movement on-board sensors, cameras, lasers, GPS and telecommunications to obtain information in order to make their own judgments regarding safety-critical situations and act appropriately by effectuating control at some level. Communicated autonomous cars in turn, use only technologies that enable collecting information about the environment through communication with other vehicles (vehicle-to-vehicle – V2V communication), with infrastructure (vehicle-to-infrastructure – V2I communication) or any other elements (V2X communication) [Self-Driving Cars: The Next Revolution, 2012]. Vehicles equipped with V2V – vehicle-to-vehicle communications technology – that provide only safety warnings are not automated vehicles, even though such warnings by themselves can have significant safety benefits and can provide very valuable information to augment active on-board safety control technologies. On the other hand, in order to make the vehicle fully functional and to achieve expected autonomy, the interaction of not communicated and communicated technology is needed.

In fact, vehicle automation can range from full autonomy, where no human intervention is required, to vehicles where human intervention may be required under certain conditions. In particular, we can distinguish systems by their degree of autonomy (that is, how much intervention is required by the human driver) and by the functions that are autonomous (for example, keeping the vehicle in a lane at a constant speed, or automatically braking to avoid obstacles). The Society of Automobile Engineers (SAE International) has developed a taxonomy and definitions for terms related to autonomous systems that have become widely used. SAE identified six automation levels, from Level 0 (no automation) to Level 5 (full automation). Levels provided by SAE are compatible with The United States National Highway Traffic Safety Administration (NHTSA) framework, useful to help thinking through the implications of these technology developments [Nhtsa.gov, 2018]. Level 0 is the No-Automation level when the driver fully controls the vehicle. The driver is in complete and sole control of the primary vehicle controls (brake, steering, throttle, and motive power) at all times, and is solely performs all driving tasks. Examples include systems that provide only warnings (e.g. forward collision warning, lane departure warning, blind spot monitoring) as well as systems providing automated secondary controls such as wipers, headlights, turn signals, hazard lights, etc. Level 1 is the Driver Assistance when vehicle is controlled by the driver, but some driving assist features may be included in the vehicle design. An advanced driver assistance system (ADAS) on the vehicle can sometimes assist the human driver with either steering or braking/accelerating, but not both simultaneously. The driver has overall control, and is solely responsible for safe operation, but can choose to cede limited authority over

a primary control (as in adaptive cruise control), the vehicle can automatically assume limited authority over a primary control (as in electronic stability control), or the automated system can provide added control to aid the driver in certain normal driving or crash-imminent situations (e.g. dynamic brake support in emergencies). Examples of function-specific automation systems include: cruise control, automatic braking, and lane keeping. Level 2 is a Partial Automation involves automation of at least two primary control functions working in unison (e.g. adaptive cruise control in combination with lane centring). On this level of driving automation, a driver is temporarily relieved from these driving functions. Vehicle has combined automated functions, like acceleration and steering but the driver must remain engaged with the driving tasks and monitor the environment at all times. An advanced driver assistance system (ADAS) on the vehicle can itself actually control both steering and braking/accelerating simultaneously under some circumstances. The human driver must continue to pay full attention (monitor the driving environment) at all times and perform the rest of the driving task. The driver is still responsible for monitoring the roadway and safe operation and is expected to be available for control at all times and on short notice. The system can relinquish control with no advance warning and the driver must be ready to control the vehicle safely. An example of combined functions enabling a level 2 system is adaptive cruise control in combination with lane centring. Level 3 is a Conditional Automation enables all safety-critical functions to be automated (including steering, throttle, brake). The driver is a necessity but it is not required for him to monitor the environment. The driver must be ready to take control of the vehicle at all times after notice. The vehicle monitors any changes in conditions that require a transition back to driver control. The vehicle is designed to ensure safe operation during the automated driving mode. An Automated Driving System (ADS) on the vehicle can itself perform all aspects of the driving task under some circumstances. In those circumstances, the human driver must be ready to take back control at any time when the ADS request the human driver to do so. In all other circumstances, the human driver performs the driving task. An example would be an automated or self-driving car that can determine when the system is no longer able to support automation, such as from an oncoming construction area, and then signals to the driver to reengage in the driving task, providing the driver with an appropriate amount of transition time to safely regain manual control. Level 4 is the High Automation level where the vehicle is capable of performing all driving functions under certain conditions. The driver may have the option to control the vehicle. An Automated Driving System (ADS) on the vehicle can itself perform all driving tasks and monitor the driving environment – essentially, do all the driving – in certain circumstances. The human need not pay attention in those circumstances. The most advanced in driving automation level 5 – Full

Automation level is when the vehicle is capable of performing all driving functions under all conditions. The driver may have the option to control the vehicle. An Automated Driving System (ADS) on the vehicle can do all the driving in all circumstances. The human occupants are just passengers and need never be involved in driving. The very important notice is that only level 4 and level 5 requires the regulatory changes. There are no legal barriers for using cars with automation from level 0 to level 3.

2. Legal Perspective of Poland

Trying to characterize the legal landscape of using and testing autonomous cars in Poland we have to reach the very “fresh” Act on Electromobility and Alternative Fuels, dated on 11 January 2018 [Journal of Laws of 2018, item 317] and signed by the Polish President on 5 February 2018 after a rapid passage through both chambers of parliament. The Act is mainly aimed at promoting and speeding up the development of electric infrastructure for electric cars in Poland, but there is another almost unnoticed additional aspect of this regulation – enabling testing of autonomous vehicles on Polish roads. The Act also provides the legal definition of autonomous vehicle giving up dated 26 April 2017 proposal of the Polish Ministry of Energy that an autonomous vehicle is an electric vehicle, making impossible testing autonomous vehicles with different drive than electric on Polish roads. Thus, the electromobility does not necessarily have to be associated with autonomy. Act on Electromobility and Alternative Fuels provides the amendment to the Polish Road Transport Act of 20 June 1997 [Journal of Laws of 2017, item 1260 as amended] and according to Article 55 adds the section 6 titled “The use of roads for research works on autonomous vehicles” defining in Article 65k the autonomous vehicle. According to the definition, autonomous vehicle is a motor vehicle, equipped with the systems that control the movement of this vehicle and allow its movement without the interference of the driver, who can take control of the vehicle at any time. A first remark shall be, that Polish legislator tends to define the autonomous vehicle as a fully-automated (level 5 according to SEA/NHTSA levels) when the vehicle is capable of performing all driving functions under all conditions and the driver may have the option to control the vehicle. Therefore, it is allowed to test autonomous vehicles at all levels of automation. The second note is, what was mentioned before, that the use of an adjective “autonomous” is not entirely correct, because it suggests the independence of the system responsible for steering the vehicle, when in reality it is just the opposite – “autonomous” driving is the result of a series of interconnected elements. The third remark on the definition is, that on Polish public roads only motor vehicle can be tested. According to the Road Transport Act, the motor vehicle it is equipped with a mo-

tor means of transport intended to move on the road and a machine or a device adapted to it, the design of which enables driving at a speed exceeding 25 km/h, this term does not include agricultural tractors, mopeds and rail vehicles. The conclusion is that not only passenger cars but also e.g. autonomous lorries may be tested on Polish roads, but vehicles not reaching the speed of 25 km/h may not be tested. The fourth remark is that the autonomous vehicle must be equipped with systems that control the movement of this vehicle and allow its movement without the interference of the driver. It has not been clarified what kind of systems should be, so there are no minimum technical requirements in this area. The only technical requirement results from the further part of the definition, indicating that the driver must be able to take control of the vehicle at any time. So, tested vehicles must be equipped with steering and other elements necessary for the physical takeover of control by man. According to the definition, it is not allowed to test vehicles not equipped with steering wheel and gas and brake pedals. Another, the fifth comment is on the definition of a driver. Accordingly, to the Polish regulation under the Road Transport Act there are two understandings of the “driver”. First, the driver is the person who drives a vehicle, or a set of vehicles and it is distinguished from the driver, which means the person authorized to drive a motor vehicle or moped. In the autonomous vehicle definition, Polish legislator uses the “driver” in the first functional sense what is consistent with two international traffic conventions in Poland, signed in Geneva on September 19, 1949, and drawn up in Vienna on November 8, 1968. Both predict that the vehicle should have a driver able to control the vehicle permanently.

Act on Electromobility and Alternative Fuels also states that public roads may be used for carrying out research activities related to testing autonomous vehicles when certain safety requirements are met, and a special decision was issued to this activity organiser [Article 65¹ of the Road Transport Act]. To obtain the approval, the organiser of autonomous vehicles testing must submit a formal written application to the appropriate road authority where the tests will take place. The application must meet all formal and legal requirements provided by the Act, and include all required attachments, such as a document confirming the conclusion of a compulsory insurance contract for civil liability of the organizer of research works for damages arising in connection with conducting research related to driving autonomous vehicles, which comes into force in the case of obtaining a permit for conducting research works, proof of payment for this insurance and a copy of the professional decision registration of vehicles issued on the basis of Article 80t paragraph 2 of the Road Transport Act (requirement that will come into force on 1 July 2019). The organizer of the research activities can be anyone (both a natural person and an organizational entity) because the law does not specify any criteria that such an entity should meet, which should be assessed negatively. After submit-

ting the correct and complete application, the appropriate road authority consults with the residents of the commune (district), in the area of which research will be carried out, application for research works, placing this application on its website and setting a deadline for submitting comments. This period cannot be shorter than 7 days. In the course of consultations, the owner of the real estate located along the planned route, on which the autonomous vehicle will move, may object. After this stage, the appropriate road authority issues the permission for carrying out research activities after obtaining the consent of the competent road administrator, on which the research works are to be carried out and the opinion of the competent provincial police officer regarding the impact of research on the traffic flow on the planned route along which the autonomous vehicle will move. The organizer of the research activities also has certain duties specified in the Act. According to Article 65n of the Road Transport Act, the organizer is obliged to (1) enable the Police to perform the activities necessary to ensure road safety and protect human life and health and property while conducting research activities; (2) ensure that during the conduct of research activities in an autonomous vehicle, in a place intended for the driver, there is a person with driving licenses who can at any time take control of the vehicle, in particular in the event of a safety hazard in road traffic; (3) to publicly disclose information about the planned research works and the course of the route on which the autonomous vehicle will move; (4) provide the Director of the Transport Technical Supervision with a report on the research carried out related to the testing of autonomous vehicles and their equipment, in accordance with the form set out in the regulations issued on the basis of Article 65n paragraph 2, within 3 months from the day of completing the tests.

3. The Issue of Responsibility for Accidents Caused by the Autonomous Vehicles

Today, the legal basis for liability in road accidents is civil concept of negligence. Traditionally, car accidents are assessed through the lens of driver negligence, with the potential for product liability only when a defect in the car causes the accident or is alleged to have exacerbated the injuries. A driver that fails to exercise due care can be liable in negligence for certain losses that arise as a result of an accident. But now in the new era of self-driving or in fact entirely autonomous cars the very first question is what the “driver” actually means.

The law essentially needs to clarify where responsibility lies, who would be responsible if the technology fails and places drivers and passengers at great risk. A manufacturer has never had a duty to design an accident-proof or fool-proof vehicle. Wheth-

er it bears some responsibility for the crash may ultimately turn on the degree of control it had over the car. Today the biggest question is about the responsibility of the autonomous car accident. Is responsible the car manufacturer, the manufacturer of the software that failed to prevent the accident or the “driver”. National laws (if exist) the most commonly places liability for any accident on the operator of the autonomous vehicle, defining the operator as the person behind the controls or who causes the technology to engage. Under general tort law principles, the element of control is likely to be determinative in national laws. For example in the United States civil law system, there are theories of the producer responsibility and the operator responsibility enough to overcome the issue of autonomous cars movement responsibility [Schellekens, 2015]. In short, the responsibility can be borne by the producer and by the operator. The driver could be responsible for negligence, no-fault liability and strict liability and the producer responsibility is a mix of contractual responsibility and product liability. This responsibility can be based on two foundations: theories of liability and the theory of defects (types of defect) [Kalra, et al., 2009]. Today, in the United States no-fault liability-based systems become attractive due to protection of producers who avoid the liability caused by their fault. On the other hand, due to the fact, that this solution is not widespread, it can discourage consumers in the United States, because they would be burdened with a responsibility they had not previously incurred. Therefore, the problem is not the lack of regulation but the question whether possible solutions are in fact desirable solutions. A number of complicated liability questions arise in relation to car accidents involving autonomous vehicles. For example, what if the vehicle had made a choice that the driver would never have chosen – should the driver be responsible? It is also impossible to apply the liability to the driver who has no control over the vehicle due to the disability, such as blindness or who falls asleep and the vehicle had driver monitoring systems that failed to wake up the driver. Can a driver legally rely on this feature (or lane or brake assist) and sue the manufacturer when the car did not alert the driver of a hazard? Should the driver be absolved of its own negligence? Can a manufacturer be subject to liability for not preventing an accident, even though its technology did not cause the harm? Added to the complexities of whether the manufacturer or driver takes responsibility, is the fact that connected vehicles could be vulnerable to hacking. Legislation in many countries looks at hacking as a criminal action. However, a responsibility will undoubtedly also rest with the car manufacturers to make sure adequate precautions have been taken to prohibit unauthorized access or use. It will not be as clear as saying that any unauthorized hacking generates a liability on the car manufacturer, but responsibility will likely arise where the protections put in place to prevent it are not appropriate.

CONCLUSION

In fact, automated vehicles can avoid some of the bad behaviours seen on the road today such as texting, distraction or being impaired while driving. Development of autonomous cars is also a chance to decrease fatality on public roads and to reach all advantages of mass-use autonomous vehicles. As manufacturers race to get autonomous vehicles on the road, specific regulations on use of those vehicles are slow to follow. In fact, now the legal and sociological barriers to autonomous cars are even greater than the technological challenges. The problem of autonomous cars is complicated and multifaceted. Problems related to autonomous vehicles are important part of public discourse related to the introduction of new technologies. Significant social benefits connected with a new type of transport tend to accelerate the legislative work on using and testing autonomous cars. Lawyers should start a broader discussion on possible legal solutions. Internationally there is a great deal of thought being given to what laws will be necessary for the general operation of autonomous vehicles. Many fields of law are not prepared for driving automation and although a handful of countries have passed specific laws related to the new technology, most still have not. That most of the national regulations have to catch up with the technology. The immediate question for national governments, legislatures, and courts to decide is how to treat liability over the next twenty or so years as society transitions to widespread use of fully-automated cars. Shared by both the human driver and autonomous vehicle technology providers roads will bring complex questions of liability and in the short term, courts will need to work through these thorny issues, and determine and allocate liability, on a case-by-case basis. In fact, the reasoning for the flexibility in laws is that a lot of lives have not been lost and a lot of accidents have not yet occurred. Once we reach the point where real people incur injuries and lawyers begin to closely examine national laws and possible litigation, there will be more clarity in the law. Polish example of attempting to regulate testing autonomous vehicles and conducting research activities on autonomous vehicles shows that although the very idea of regulating the issue of using and testing autonomous vehicles on public roads deserves approval, its implementation is the most important thing. The Polish government is determined to speed up the development and implementation of available technology for individuals and businesses to use autonomous driving by expressly allowing testing of autonomous vehicles on public roads. The currently proposed regulations do not regulate all issues related to autonomous driving in Poland, however, it is a step in the right direction which may make Poland much friendlier for testing autonomous vehicles by allowing tests to be performed on public roads and setting out the legal framework for these tests.

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Part III.

Public Administration and Administrative Law – *quo vadimus?*

PUBLIC AND PRIVATE ORGANIZATIONS

ORGANIZACJE PUBLICZNE I PRYWATNE

Summary

In this paper author focuses on the inquiry into whether and to what degree public and private organizations differ.

Keywords

public, private, organization, differences, similarities

Streszczenie

W artykule autorka koncentruje się na różnicach występujących pomiędzy organizacjami publicznymi i prywatnymi.

Słowa kluczowe

publiczny, prywatny, organizacja, różnice, podobieństwa

INTRODUCTION

In the business world, there are what you could think of as two separate universes. One universe would be the public sector, and the other would be private. Truly, often these two sectors are treated as separate entities, filled with differences and never quite aligned in terms of conversation and attitude. In reality, there are quite a few differences between the two, however, there are also some similarities and complex natures of the two that deserve to be mentioned, when applicable. In this day and age, organizations alike are changing at lightning speeds and with that come the inevitable overlapping of ventures, both private and public. There are numerous studies on this topic which goes to show that indeed it is quite controversial and multi-sided. Because of how quickly organizations themselves change, it is only natural to realize that perhaps the differentiations between the two also slowly change, especially in terms of operation and motives.

This paper will try and analyze both types of organizations in terms of a number different categories and will mention similarities when they exist. The categories include:

- goals,
- goods and services,
- resource ownership,
- structure,
- culture,
- leadership,
- decision making [Khan, Khandaker, 2016].

These categories are crucial as they all include information that can highlight the differences and similarities of the two seemingly very different types of organizations. Towards the end of this paper, we will also discuss a new category, entrepreneurship, as it applies to both sectors. This of course will mention all the new information in both forms of organization in terms of how innovation, ideation, and communication can be applied in this new day and age.

Before going any farther, it is helpful to go a little deeper into what exactly we mean when we say “organization”. An organization in the simplest of terms is an organized group of individuals with a particular purpose. Business organizations, then, are groups that work towards a certain interest. Organizations are all around us and have an influence in every aspect of our lives, whether we realize it or not. From little stores, giant conglomerates, to government departments, organizations play a big part in our day to day. As a general overview, private organizations are commonly viewed as being the organizations created to create profitability and are owned privately, meaning not by the government.

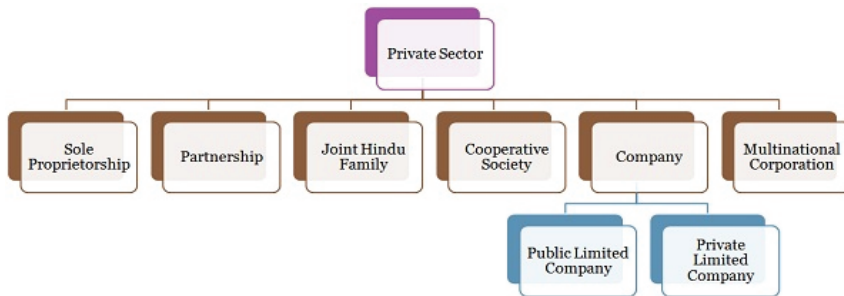


Fig. 1. “Private Sector Organizations”.

Source: Surbhi, May 20, 2015.

One thing to note is that just because part of the definition of a private organization is “for profit”, doesn’t mean that the companies are only operated by individuals looking out for themselves. An example of this is that non-profits can also be considered private

organizations as not all are operating on governmental grants. Non-profits are more commonly known to be part of the voluntary sector, or the third sector apart from the public and private, to avoid confusion.

The government runs what we call the private sector, or private organizations. These private organizations are created for the purpose of carrying out governmental activities such as providing services for citizens, create infrastructure, forming national armies in the military, and creating police forces.

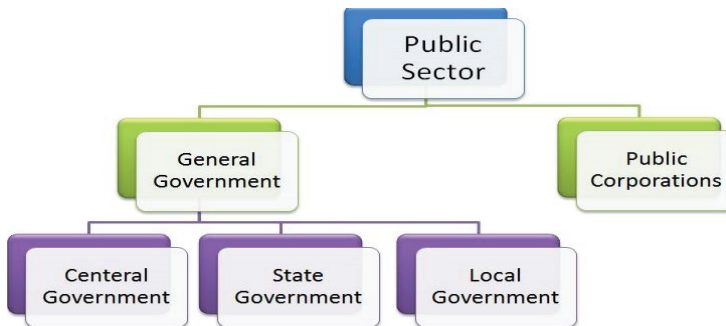


Fig. 2. “Public Sector Organizations”.

Source: <https://www.examrace.com/Current-Affairs/NEWS-Public-Sector-Enterprises-General-Studies-Paper-2.htm>, access date: 13.07.2018.

1. Goals

In terms of goal differences between public and private organizations, there are many [Perry, Rainey, 1998]. For starters, as was mentioned earlier, private organizations work to achieve profit for the company and to appease stakeholders, they are ruled mostly by individuals and have to abide by market forces. Public organizations are ruled by political forces and rely on the government. It can be said that the goals of the public sector are often vague and intangible as they are complex in nature and are exposed to more accountability. When something goes wrong, everyone is quick to jump on the government and public organizations due to the idea we have that they work for us, and that our taxes better be going towards making the public sector as efficient as possible. Having said this, many of the goals of the public sector are to uphold this accountability we desire and to handle more scrutiny. The goals of the private sector can focus more intensely on niche goals and desired outcomes and deal with a lower level of scrutiny from the public [Wirick, 2009].

Despite the level of scrutiny faced by public organizations, they have the capacity of surviving on poor efficiency and lack of organization. This would be because they are

essentially backed by the government which is very vast and powerful. On the other hand, private companies cannot handle a high level of scrutiny if it comes along with a number of law suits and lack of business. Organizations that are privately owned and fail to succeed will often die quickly and have little impact. This differentiation between the two often mean that the goal setting is different and the external forces will have different influences on the sectors. Another interesting piece of information regarding goal setting between the two types of organizations is that public organizations often can't choose what their goals are in the first place. While private organizations often have unlimited reign on goals and desired results, public organizations are often overlooked by interest groups and are constantly faced with legislative regulations and political agendas. In terms of similarities, there is one that could be mentioned. Namely, there are some public organizations in industries that are created for profit making purposes in order to contribute to the economic development of the country. These organizations face competition for resources and must choose particular management strategies much like a privately owned organization [see more: Alford, Greeve 2017; Osborne, Gaebler 1992].

2. Goods and Services

Without a doubt, there a lot of differences to be noted here. Firstly, in terms of goods and services, those which are coming from the private organizations depend on the market and demand of the customers [Khan, Khandaker, 2016]. Furthermore, the organizations face the inevitable competition from similar industries and the products/services are rival. On the other hand, the public organizations do not exist in a competitive landscape. Even if there would be competition, the public organizations enjoy the dominant position in that situation. One thing that can be said of this, however, is that it causes some issues such as the public taking advantage of some services without bearing any of the cost. This is what we call a free-rider problem. For example, there are those who enjoy governmental benefits such as health care and food stamps because of their unique position of not being able to function without it. There are those who don't pay taxes (which are what funds the public services) and yet get to enjoy the many things the public sector provides. This also applies to the safety we enjoy from our police stations and so on.

One of the most obvious differences when talking about these two types of organizations is quite simply the type of consumers. The difference is little yet distinct. The public sector provides its services to the general public. Namely, there are things that we cannot refuse as a service of the public service because of its intangibility. We cannot refuse to live in a country that is currently being protected by military forces that are funded by

the government. We receive mail by a mailman who is paid by the government, and we walk down the street safe from threats when the police are nearby. Conversely, the private organizations serve the “general consumer public” meaning it’s the active consumers who go out of their way to buy products and services that are targeted.

3. Resource Ownership

When it comes to resource ownership, private companies are seen as having a very distinguishable structure whereas public organizations have one that is much less traceable/distinguishable [Khan, Khandaker, 2016]. This is because private organizations are owned by individuals, something that is tangible and easy to identify such as an entrepreneur or shareholders. These are the people who own the property, physical or intellectual, and receive monetary benefits. Public organizations, however, have a different situation. Public ownership is not identified in terms of individuals but are owned by the government. Joint activities, however, have a mix of ownership in cases when the public sector chooses to partner with private enterprises. In terms of similarities, there are public organizations who have shares in the market meaning the ownership is at times more easily identified. An example of this is British Airways [Khan, Khandaker, 2016].

4. Organizational Structures

Organizational structure, which is the division of labor of members into a number of distinct tasks, plays a huge part in both private and public organizations [Rainey, 1997; Ouchi, 1977]. To be more specific, there are a few different types of structure that can be found in both. The structures found in these two types of organizations were designed to create the most efficiency and flow within that given organization.

When it comes to public structures, one can name the following:

- a. vertical – vertical structures can be found in most governmental organizations. This is easily identified by a structure in which there are a few people at the top, and then an increasing amount of people as you go down towards middle management and then more in the lower level positions. The people at the top make the important decisions and the lower level workers carry out those tasks. The reason this can be found among many governments is because it allows for more defined task creation and a lower level of job confusion,
- b. horizontal – horizontal structures are different than the vertical in the sense that there are only a few people at the top, but many right below them. This is a very

popular structure when talking about law firms, medical practices, or architecture firms. Other city and country social services such as educational programs may also find themselves using such a structure. It is also one of the structures that utilizes more of a cooperative model versus hierarchical order,

- c. divisional – divisional structures are unique in the sense that function and responsibilities are divided based on specialty or geography. Organizations that use this are courts, such as federal courts. They are divided into regional circuits and most countries have multiple courthouses which are not affected by one another. Other organizations that use this structure are police and fire departments.

When it comes to private structures, it should be highlight that the private sector has many different structures, all designed to achieve the most efficiency and benefit for the company. They also differ in regards to ownership and business goals. Here are a few of them:

- a. sole proprietorship – can be found used by doctors, mechanics, beauticians, etc. Individually owned, the owner is the boss and the worker. It's fast paced and very efficient. One of the oldest forms of private business [State of Washington],
- b. partnership – run by two to twenty members. Can be one of two types, ordinary or limited. The ordinary partnership is much like the sole proprietorship in the sense that there is unlimited liability. All partnership assets can be taken in case of loss. The limited partnership, there is a limit to how much can be taken in case of loss. In case of the creation of a limited partnership a Partnership Agreement must be constructed [State of Washington],
- c. limited companies – two types, private limited and public limited. The private limited usually have two to fifty people and shares can only be sold to a certain number of people such as friends and family. In a public limited structure, shares can be sold to the public [State of Washington],
- d. cooperatives – cooperatives are made up of members who pay member fees and it's the fees that provide the capital for the organization [State of Washington],
- e. franchise – franchises are businesses that follow the methods and branding of an already established company. The companies remain exactly the same and are able to expand anywhere in the world. Franchisee owners run the company the same way the others are run. A good example of this kind of structure is McDonalds, Starbucks, etc. [State of Washington],
- f. charities – charities are the non-profits in the private sector mentioned earlier. These organizations assist those in need such as education establishments,

or hospitals. They're not allowed to distribute shares as they are tax exempt [State of Washington].

Another way of differentiating between public and private sector structures is through the conversation of mechanistic/classical structure vs. organic/modern structure. Mechanistic structure is well known to the public sector and is much more formal and traditional than the organic structure. The structure lends itself well to performing in a stable, secure environment which is different than the private, organic structure that has to perform in the market with high levels of risk and change. These structures slowly change but still remain to this day a way of differentiating the two types of organizations.

Mechanistic Structure	Organic Structure
High horizontal and vertical differentiation	High complex horizontal and vertical integration
High formalisation	Low formalisation
Centralisation	Decentralisation
Standardization	Joint problem solving and interaction
Close Supervision	Personal expertise & creativity without supervision
Vertical communication	Horizontal communication

Tab 1. “Mechanistic structure versus organic structure”.

Source: Khan, Khandaker, 2016, p. 2887.

5. Culture

Culture is an interesting topic when it comes to the differences/similarities between public and private organizations. There are a few different general observations that researchers have made when it comes to defining these two cultures and how they operate.

5.1. Private Culture

Often times people join the private sector in hopes of being able to climb a social ladder and have the opportunity of making a large amount of money. Many private sector organizations recognize this and thus create a culture that encourages self-growth and achievement as well as innovation and value. These things together create a culture that is inherently different than the public sector culture. The culture in private sectors can also be highly variable as the private sector is vast and contains many different types. There are areas in the private sector that could encourage creativity and team work thus creating a culture that is unique for that firm.

5.2. Public Culture

Unlike the private organizations, the government doesn't necessarily define itself in riveting new adventurous ventures and thus the culture is quite different. Considering they face large amounts of legislative law and regulations, the culture is more based on getting the work done as its planned out, without veering from the path. The culture is more formal and civil service and compensation rules of the government make it more difficult to encourage outstanding performance and discourage poor performance. In concept, there is more a culture based on supposed "integrity and honesty" as well as accountability to the public.

6. Leadership

In terms of leadership, the demands of leaders of both the public and private organizations are vastly different. The kinds of leadership portrayed are the ones that are selected to create the most efficiency and order in that given organization. The characteristics in leaders such as personality, skills, and abilities are sought out based on certain tasks and departments. For the private sector, leaders typically adopt what is called "strategic leadership" which is defined by its ability to respond to a certain situation/environment. In the case of the private organizations the environment is highly variable and contains risk meaning leaders must be proactive and able to adapt. There is also more discretion in the private sector than the public one as the public organizations are faced with more laws, rules, and oversight. Because of this, it can be said that public leaders have less capacity to exercise their leadership, whereas often times the private leaders are given more control and power to authorize decision making [Khan, Khandaker, 2016].

Political necessities are a focus of the public leaders and the pressure they face from interest groups and overseers creates an environment where there is high level of scrutiny and hindrance. This hindrance is what we see very commonly in cases where leaders have certain plans/goals but are not able to execute them. In cases where they are able to execute ideas, the process is often long and tedious while the decision making process is much shorter and quicker in the private organizations [Khan, Khandaker, 2016].

In terms of similarities, both types of organizations need at least some form of leadership and management. The difference between leadership and management is quite simple, management is more concerned with how to get things done and whether things are being completed in a timely manner, and leadership is more about how these activities influence the people involved and what the bigger picture is. It can be said that the goals of managers come out of necessities while leadership goals are more bent towards

culture and desires. Though both types of organizations need these managers and leaders, the differences outweigh the similarities. Private organization managers driven by profit whereas the public sector managers are more focused on accountability and public opinion. Because of the scrutiny and pressure of opinion and regulations, some researches stipulate that it is easier to be a manager in a public setting rather than a leader [Anderson, 2010].

7. Decision Making

Decision making means looking at a variety of problems and figuring out which way is the best way to solve that particular issue. These decision making processes can either be used to solve an issue, or to innovate and improve a company. Listed below are a few different methods of decision making as they are used in public and private organizations:

1. bounded rationality:
 - a. similar to rationalistic with a few exceptions and limitations:
 - decisions must operate for the future and with all things relating to the future, there will be uncertainties,
 - information may not be available nor free, costs of information must be taken into account,
 - it is difficult to recognize all alternatives due to human cognitive restraints,
 - decision maker is vulnerable to emotions and bias; he/she cannot shut off subjective viewpoints from the decision making process [Online Dictionary].

This model demonstrates that a decision must be deemed “good enough” as it’ll never be perfect,

2. incremental model:
 - a. based on a marginal or gradual change:
 - decision maker focuses only on those policies which differ “marginally” from other existing policies,
 - small numbers are considered,
 - few “important” consequences are evaluated,
 - opposite of taking huge leaps to make a decision and instead focuses on breaking the process down [Ghahrai, July 2, 2017],
3. garbage can model:
 - a. views decisions are outcomes or interpretations of several relatively independent streams within the organization,
4. rationalistic model:

- a. a logical, multi-step model for choosing between alternatives that follow an orderly path starting with problem identification to solution. It favors objective data and assumes that the decision maker has all the perfect information (data that is relevant to a particular decision and is available).

Based on these definitions, researchers stipulate that it is hard to determine exactly which types of organizations work best with any of the methods, though they do say that incremental methods are good for the public environment because of the stable environment allowing for the long process that is incremental decision making. A good example of this is the government budget as the process of changing it is usually based on previous budgets and requires numerous small changes. The garbage can model appears to be a good fit for private organizations due to the fact it is well suited for changing environments that are looking for constant innovation. In terms of rational and bounded rational decisions, it is harder to follow the former method so most decision makers choose the later, as it is hard to be fully rational. Even so, the public sector is more likely to choose the rational method in cases of serious problems.

8. Additional Similarities

Though the similarities were few between the two types of organizations in a formal sense, there have been speculations about similarities in a general sense. These similarities expose the elements of the two sectors that are more hidden in sight yet still prevalent:

1. customer service orientation – the customer in the eyes of the private sector is someone who has agreed to pay for a product or service, and the “customer” for the public sector is the citizens as it relates to public service, despite these differences, both organizations are customer based,
2. open to change – technology and changes make it so both organizations must change in some shape or form. Openness to change is what allows improvement and new ideas,
3. opportunities for employee growth – both sectors provide opportunities to grow and take on special assignments,
4. executive support – executive staff is ready and willing to provide support and provide motivation,
5. mentoring – extra time may be spent sharing experiences and guiding employees through tasks.

9. Conclusion: Entrepreneurship in Both Organizations

While entrepreneurship is well known to the private sector, it is now beginning to make an appearance in the public world. Traditionally, the definition for private entrepreneurship consists of the creation of new organizations and wealth creation. Another more opportunity based definition states that entrepreneurship is about the discovery and exploitation of profitable opportunities. Based on this, it is easier to see how it could fit in the public world. Definitions of public sector entrepreneurship are limited and diverse. A researcher defined a public entrepreneur as “an individual who undertakes purposeful activity to initiate, maintain or aggrandize one or more public sector organizations” [Ramamurti, 1986, p. 143]. He stated that there is an increasing need for the public sector to be more dynamic and innovative even though it would be hard to start. Although risk taking decisions are not always desirable in the public sector, public organizations need to start encouraging risk taking behavior since their policy environment is never entirely predictable and stable [more on relevant subject: Kearney, Hisrich and Roche, 2009].

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MORAL LEADERSHIP IN THE XXI CENTURY. THE CASE OF ANGELA MERKEL AND THE EUROPEAN REFUGEE CRISIS

MORALNE PRZYWÓDZTWO W XXI WIEKU.
PRZYKŁAD ANGELI MERKEL I KRYZYSU MIGRACYJNEGO W EUROPIE

Summary

With the aim to bolster support for a pan-European consensus on managing the refugee crisis culminated in 2015 with more than 1 million people reaching European soil, the German Chancellor Angela Merkel gave in October of the same year an essential speech to the European Parliament. In the article author claims that Merkel's behaviour equals that of a global moral leader. To manifest this thesis, Merkel's speech is analysed based on the four key characteristics of global moral leaders by Kirk O. Hanson.

Keywords

leadership, morality, European Union, refugee crisis

Streszczenie

W 2015 roku do Europy przybyło ponad 1 milion uchodźców. W październiku tego samego roku Kanclerz Republiki Federalnej Niemiec, Angela Merkel, wygłosiła ważne przemówienie w Parlamencie Europejskim. W artykule autorka stawia tezę, że postawa Kanclerz Niemiec wobec kryzysu migracyjnego w Europie nosi cechy globalnego moralnego przywództwa. Autorka, aby udowodnić swoją tezę, posługuje się stworzonymi przez Kirka O. Hansona czterema kluczowymi charakterystykami moralnego przywództwa.

Słowa kluczowe

przywództwo, moralność, Unia Europejska, kryzys uchodźczy

INTRODUCTION

Although the 21st century is probably no less challenging in terms of global turmoil and crises than the previous one, they do not equal each other, and challenges take their own shapes and forms. Societies were and still are faced with natural disas-

ters (e.g. floods, earthquakes, tsunamis), internal as well as international conflicts and wars, with poverty and malnutrition, with threats of terrorism (e.g. ISIS, Boko Haram), as well as with economic downturns as demonstrated by the global financial crisis. The year 2015, however, particularly marked a watershed for Europe. It was a year during which terror hit European capitals, the Ukrainian conflict reached its peak in heavy fighting's, and a refugee crisis with millions of people fleeing war, violence, and poverty in historic dimensions broke out.

Under this hardship, people mostly build their hopes on political leaders to free them from the emergency. Here, politicians and statesmen sometimes find themselves under enormous pressure as they must quickly make their decisions according to the interests of the community. They must weigh between what is right and wrong, while at the same time being concerned about the consequences of their decisions and respect of human and moral values.

In 2015, the refugee crisis culminated with more than 1 million people from the global south reaching European soil by the Mediterranean Sea and by land [UNHCR, 2015]. The high numbers of displaced people for European leaders and its citizens did not only constitute and still constitute a political, cultural and logistical challenge but also a moral one. Remember the image of a three-year-old Syrian boy washed up on a Turkish beach that went global and finally raised Europe's leader's awareness of the need for moral leadership and a change in the public and political mood.

As reaction to this humanitarian crisis, though at the expense of European unity and the formation of opposing forces particularly in the new member states, Germany's Federal Chancellor Angela Merkel gave an essential speech to the European Parliament in October the same year in which she explained her "open door" policy. Months later she was named *person of the year* by the *Time Magazine* "for standing firm in support of aid to refugees" [Vick, 2015] and praised by the UN General Secretary Ban Ki-Moon "for human political leadership on the refugee crisis" [Dunn, 2016].

This essay claims that Angela Merkel's behavior clearly represents that of a moral leader. To underline this thesis, a theoretical framework will be constructed upon which a definition of moral leadership will be given. This framework will be applied to Angela Merkel's speech given to the European Parliament which serves as a perfect case for this essay. A range of press articles will also be included into the analysis.

1. Defining Moral Leadership – A Theoretical Approach

By examining relevant literature in search of an absolute definition of leadership, and moral leadership, one must note that scholars rather tend to describe what they under-

stand by the term Leadership than agreeing on a common definition. Ciulla's referring to Rost's collection of 221 definitions from 1920s to the 1990s [Rost, 1991, pp. 47–102] concludes that "leadership is about one person getting other people to do something" [Ciulla, 2003]. Accordingly, leadership is necessarily composed of two bodies: a leader and a group of followers undertaking action because of the leader's appeal. However, for an effective leadership – meaning to achieve the followers doing what the leader has determined – according to Rhode, leadership also requires a certain relationship since the title cannot inspire people to follow their leaders [Rhode, 2006]. To inspire, drive and convince people, Gini concludes that "the vision and values of leadership must have their origins and resolutions in the community of followers." [Gini, 2004, p. 40] Hence it is extremely necessary that the leader's behavior respects and reflects the will of the followers to have decisions be accepted or implemented by the community of followers.

When it comes to the characterization of moral leadership, it is inevitable to look for a definition of morality. Reeck defines morality as based on "socially approved patterns and norms of proper conduct." [Reeck, 1982, p. 22] By this definition it can be assumed that society was and is still crucial for the development of moral standards and for judging what is morally right or wrong, good or bad. At this point, the significant role of a leader becomes visible: As the leader's actions have a greater impact on a greater number of people and as followers look at him as a role model, he necessarily should act in accordance with fundamental moral principles to maintain or reestablish a sense for moral appropriate behavior in society. At this point, however, the question arises which consequences a leader must face if his values differ from the follower's values and expectations? If he acted according to his moral values but not in the interest of his followers? Does he not eventually risk being replaced?

For the moral assessment of leadership, most scholars consider e.g. the intentions of leaders, the means leaders use to lead and the ends of leadership [Ciulla, 2005, p. 332]. Another, more pertinent approach in this regard offers Hanson's essay *Perspectives on Global Moral Leadership*.

According to him:

"Moral leadership is about leading an organization or people to accomplish an explicitly moral purpose. Moral leadership usually involves transformation, for example, by introducing a people to new moral value or calling out behavior from the group consistent with a moral value that is not currently practiced".

[Hanson, 2006, p. 291]

Apparently, these characterizations and the term global moral leadership fit perfectly to the situation of the 2015 refugee crisis calling for solidarity in overcoming the global humanitarian crisis that is accompanied by ignorance and indifference by several governments. Furthermore, Hanson provides four key characteristics of global moral leaders which shall guide the following analysis: A global moral leader demonstrates a personal commitment to a set of values; he stresses the world's need for key moral values that are not currently held or acted; he encourages to articulate and promote the values even at risk to his own power, and he finds ways to communicate and promote the values effectively [Hanson, 2006].

The following examines which of these characteristics can be recovered in Angela Merkel's speech given to the European Parliament as well as in her behavior during the refugee crisis.

2. European Values and the Global Need to Enact Those

In fact, Angela Merkel in her speech refers not only to one single value but considers an entire set of European fundamental values, which she aims to rhetorically merge in her speech. Here, in addition to the normative values that are written down in the constitutional acts of the European Union, such as in the EU Charter of Fundamental Rights and in the Lisbon treaty (paragraph 6 of the speech), also concepts of fairness and solidarity (par. 21) play an important role in her argumentation. What is even more interesting in a symbolic way is that Merkel has consciously decided speaking to the democratic elected representatives of the peoples of Europe.

Following her open-door policy, that is underlined by Merkel's famous phrase "Wir schaffen das" (we will cope), she held her speech in a renewed effort to bolster support for a pan-European consensus on the refugee crisis by emphasizing core European values. At the beginning of her speech Merkel makes references to how Europe has overcome challenges in the past by acting in unity and not according to the national interest of one's own country. She stresses how the "historic achievement" of a Europe that is "free and united [...] required tremendous exertions" (par. 2). Merkel refers to core European values of freedom and diversity and alludes to the initial fears and skepticism that had accompanied the process of granting EU membership status to former countries of the Warsaw Pact. Not long ago the citizens of many of those same countries that today are shutting their doors were the ones escaping persecution and seeking refuge. Instead of weakening Europe, these efforts have rather reinforced the European idea and its values, Merkel notes: "They have not brought us less freedom, but more freedom. They have not brought us less diversity, but more diversity" (par 4). Europe was built on prin-

ciples and values such as freedom of movement and it is meant to be united in diversity, enriched by different cultures, traditions and languages. She then goes on by saying that one of the most “precious assets” of European values, tolerance – the combination of freedom and responsibility – towards the Eastern countries and its citizens has trumped skepticism (par. 4). This act of solidarity between European states and the decision to ensure the citizens of post-communist states a life in dignity represent main European notions and reflect a united Europe also in times of crisis.

Now, with the refugee crisis reaching a peak, Europe again is facing a tremendous challenge to its own values (par. 14) and the need to act in the name of a free and united Europe is the logical consequence (par. 2): “We are facing a test of historic proportions” (par. 7), Merkel notes and tries to create a “we-feeling” by calling for a united Europe that is acting upon its values in addressing the migrant crisis and assures these people a life in dignity (par. 9) [Smalle, Surk, 2015]. “In the refugee crisis we must not give in to the temptation to fall back on national government action. On the contrary, what we need now is more Europe” (par. 18). However, she goes even further by saying that managing the crisis and fighting the causes that let people flee is not only a European but “ultimately a global task” (par. 9).

The need to act stems from the given occasion of over 250.000 victims the war in Syria has already claimed, including another 10 million refugees from Syria, Iraq, and the African continent. To get to Europe, they are forced to cross the unstable state of Libya, the Mediterranean Sea, or the Aegean from Turkey (par. 8). A disunited Europe does not only lose control over its own borders but puts refugees in death traps by allowing human traffickers to put these individuals on fragile boats (par. 20). Merkel indirectly admits that Europe has failed in the Middle East both in its political and diplomatic efforts (par. 9). This point of view corresponds with that of many diplomats, including Wolfgang Ischinger who wrote an article on how “Europe [in particular] has failed in Syria” [Ischinger, 2016].

She reminds all Member of the European Parliament that Europe shall not see refugees as an anonymous mass but to respect and treat them as human beings to uphold a minimum of humanitarian standard (par. 23). Although Merkel has been criticized from many sides for her unilateral approach, there were also voices claiming that Merkel is right – both morally and legally – on refugees [Nardelli, 2015]. In fact, she clearly demonstrates her personal commitment to core European values upon which the European Union has been founded and that are written down in the preamble of the Charter of Fundamental Rights of the European Union:

“Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law.”

Angela Merkel in her speech reminds all European countries of those values and principles they have devoted themselves by joining European Union. Now, she stresses, Europe needs to deal with the refugee crisis according to these values and in unity:

“For Europe is a community of shared values, a community founded on shared rules and shared responsibility. In my opinion this means that we must be guided by the values we have enshrined in the European treaties: human dignity, the rule of law, tolerance, respect for minorities and solidarity. In my opinion it means that pan-European challenges are not to be solved by a few member states on their own, but by all of us together.” (par. 24)

All these people that have fled their countries and left behind their homes have suffered from war and displacement, terrorism and political persecution, as well as poverty and despair. Europe, Merkel argues, needs to take collective actions to solve this crisis (par. 10).

3. The Courage to Defend and the Skills to Promote Those Values

A global moral leader is also someone, who sticks to its own values even though the odds are clearly against the person. With her open-door policy Merkel demonstratively showed the courage to articulate and promote the values she stands up for even at the risk of losing political support both domestically and at the international level. Before the refugee crisis, she was rather known as a cautious politician who acted on a combination of ideological flexibility to hold the support of her voters and that of international partners. Now she began to advocate a policy that would leave her in isolation [Dempsey, 2016]. In fact, her decision to welcome 1.1 million people amid immense support from volunteers and civil society movements has proved to be the biggest challenge to her leadership since she became German chancellor in 2005.

On the European level, she has not made friends with the eastern European countries, including Czech Republic, Hungary, Poland and Slovakia that strongly oppose her policies, and have argued that the EU needs to be tougher in protecting its borders [Eder, De la Baume, 2015]. In her speech, Merkel indirectly slammed eastern Europeans on migration and criticized these governments for not having learned from their own history

in their responses to the crisis: “Europe [...] is a region that people dream of, in the way that, 25 years ago, I and millions of others in Central and Eastern Europe dreamed of a free and united Germany and Europe” (par. 26). The Visegrad members have refused to sign up to Angela Merkel’s plans for the EU to share the refugee burden by accepting migrant quotas which has created strong division lines and disunity in Europe.

Furthermore, Merkel has demonstrated her courage to articulate and stand up for values by championing them even under growing domestic opposition. The open-door policy cost her support from her own party (CDU), while its Bavarian sister party, the Christian Social Union (CSU), has repeatedly asked Merkel to impose an upper limit on the number of refugees entering Germany. From her own ranks, some 40 conservative parliamentarians wrote to Merkel demanding a change of policy. With the New Year’s Eve attacks 2015/2016 in the German city of Cologne, in which immigrants were accused of theft and sexual assaults against local women, will has continued to erode support for the government’s asylum policies and let her approval rating fell to the lowest in more than four years (Donahue, 2016). Populist movements such as PEGIDA and the far-right Alternative for Germany (AfD) since then have gained ground in Germany. However, despite the heavy wind blowing from almost all sides she had been ready to stand firm to her values she emphasized in her speech in the European Parliament.

Merkel, however, has been criticized on several occasions for her decision to form a deal with Turkey on the refugee crisis. In her speech she emphasized the key role Turkey is playing in managing the refugee crisis and fighting illegal migration (par. 17). It is debatable whether Merkel’s decision to form a deal with a Turkey, that domestically has increasingly become undemocratic and undermines Europe’s human-rights commitments, is still morally justifiable. On the other hand, Merkel’s intention was to “help those who genuinely need our protection from war and persecution” (par. 16) by enabling war-torn people to come to Europe without taking wobbly boats. Furthermore, she aimed to take pressure from the European countries that are at the Mediterranean Sea.

Rhetorically, Merkel tries to convince her audience in taking responsibility by saying that, thanks to global entanglements and the proximity of crisis to the continent, Europe “can no longer shut off from what is happening in the world” and must accordingly act (par. 15). Merkel highlights the need for a united political process that involves all regional and international actors to address the crises surrounding Europe. And national states must also play their part (par. 16). She refers to the fault-lines between eastern and western European countries 25 years ago and how these challenges have been managed through common efforts. Furthermore, she aims to promote the idea of equality when referring to the fair distribution of refugees among all member states (par. 20). To con-

vince her audience by stressing that the economic and social opportunities will outweigh the risks (par. 27). In a quite emotional move she warns that if Europe simply closes its borders it will abandon its values and thereby losing its identity (par. 25).

CONCLUSION

The aim of the essay was to demonstrate Angela Merkel's decision to unilaterally take leadership of Europe's refugee crisis as a case in point of global moral leadership. Based on existing literature, I constructed a theoretical approach that identified four characteristics of a global moral leader. These four characteristics have then been applied to Angela Merkel's speech in the European Parliament. As it was demonstrated, she clearly presented a personal commitment to a set of values that transcend a single nation or culture. Merkel defended her own decision to open borders due to a need to enact those values according to the many crises and wars on the borders of Europe. She defended her decision even in the wake of growing domestic and international criticism, weakening her own position in favor of her values. If she misses one of the four characteristics, then it is probably the ability to promote these values effectively to its audience since Europe is still struggling in finding a solution to the crisis.

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APPENDIX No. 1

STATEMENT BY FEDERAL CHANCELLOR ANGELA MERKEL TO THE EUROPEAN PARLIAMENT

Date Oct 07, 2015

in Strasbourg

President of the European Parliament Martin Schulz,
President of the European Commission Jean-Claude Juncker,
Distinguished colleagues at the European Parliament,
Ladies and gentlemen,

The last time a French President and a German Chancellor jointly addressed the European Parliament was in November 1989. François Mitterrand and Helmut Kohl spoke together here in Strasbourg shortly after the fall of the Berlin Wall. Both of them felt that great changes were about to sweep Germany and Europe. Both of them were deeply moved by this wind of change. Both of them clearly expressed their commitment to responding with joint European solutions. And so the healing of the divide in Germany was ultimately followed by the healing of divisions in Europe.

Today we can look back with gratitude and some pride on the historic achievements that we Europeans were responsible for over these years of continental bonding. And now it seems a matter of course to us that Europe is free and united. But this historic achievement required tremendous exertions.

The old member states were, for example, visited by fears and scepticism regarding the plans to almost double the number of European Union member states. Many people viewed freedom of movement for millions of new EU citizens as a threat to their own jobs. New decision-making structures had to be created. European funds had to be redirected towards the new member states.

Today we can see that these efforts have paid off for us all. They have not brought us less prosperity, but more prosperity. They have not brought us less freedom, but more freedom. They have not brought us less diversity, but more diversity. In brief, they have brought us more Europe, because we Europeans have learned in the course of our history to make the most of our diversity. The quality that has enabled us to do this, that has allowed us to combine freedom with responsibility, is tolerance. This is a precious asset.

Overcoming the fault-lines between East and West has proven to be a massive success story. It has shown us what we Europeans can do if we only want to, if we are bold and stick together. It has also shown that there is no reason at all to be discouraged by the set-backs that are bound to come every now and again. In a nutshell, it has shown us what is possible.

This has also been shown by the drafting of the EU Charter of Fundamental Rights and the Lisbon Treaty. This has been shown by the lessons of the international financial crisis, which we mastered together and from which we emerged stronger than we had entered it. This has been shown by the European debt crisis, during which we acted together. François Hollande mentioned the difficult negotiations. But by acting together we were able to preserve the cohesion of the eurozone.

Ladies and gentlemen, today the French President François Hollande and myself have been given the privilege of addressing you. I would like to thank the President of the European Parliament for this kind invitation. Now, again, Europe is facing a tremendous challenge. We are facing a test of historic proportions.

I am talking of course about the many, many people who have set off on dangerous journeys to Europe to seek refuge here. People who are crossing the Mediterranean to reach Italy, or who are crossing the Aegean from Turkey to Greece. People who are fleeing civil wars, especially the war in Syria, which has already claimed more than 250,000 lives and made refugees of more than 10 million individuals. Refugees from Iraq and refugees from Africa who cross the unstable state of Libya to reach us.

They all know too well that our diplomatic and political efforts and those of our transatlantic allies have not yet brought peace in Syria. It proved impossible to prevent the terrorist organisation IS from gaining strength in Iraq and in Syria. The power vacuum in Libya has not yet been filled. Giving these people the chance to live their lives in dignity, in their home countries, without being scared to death by bombs and terrorists – managing that is a European task, and ultimately a global task.

Today's message is that it will take a determined contribution from Europe to solve this crisis – by taking action against war and displacement, terrorism and political persecution, and against poverty and despair.

Germany and France have endeavoured resolutely to resolve the terrible conflict between Russia and Ukraine. We have seen the Crimea annexed, and eastern Ukraine destabilised. To be quite frank, it is fortunate that we in Europe acted together, that we imposed sanctions together and said that Russia's actions constituted an impermissible violation of our principles. We are now working in the "Normandy" format to resolve this conflict. Just last Friday we held talks in France, in Paris, which give us cause to hope

that at least the ceasefire could hold. The elections in Donetsk and Luhansk have indeed been postponed. But, ladies and gentlemen, this is only one of many conflicts.

I'm convinced that we have to tailor our foreign and development policy far more closely to the goals of resolving conflicts and combating the factors that cause people to flee their homes. We will also have to provide much more money than we have done to date. The necessary decisions to this end will have to be taken quickly. All of these things will change Europe again, just as Europe was profoundly altered by the revolutions in Central and Eastern Europe 25 years ago.

Of course we will continue to work on improving our competitiveness. Of course we will work on the digitisation of our societies, on sustainable development, on a joint energy policy and on free trade agreements with other countries in line with our principles. Now more than ever, there is a need for an economically strong Europe, which uses the opportunities of the single market. To this end we have to improve economic policy coordination within the eurozone and, on that basis, correct the mistakes that were made when the European economic and monetary union was created. Germany and France will play their part in this endeavour.

But the truly massive number of refugees is changing Europe's agenda in yet another way – and permanently, because they challenge our values and interests as Europeans and worldwide in a unique way. If the aim is to regulate and ultimately curb the flood of refugees, there is no alternative to addressing the issues which cause people to flee their homes. This will obviously require time, patience and a long-term strategy.

In these past few months in particular, we in Europe have seen how closely connected we are to these global events, directly, whether we like it or not. We can no longer shut ourselves off from what is happening in the world. Not since the Second World War have so many people fled their homes as today – the number has now reached around 60 million. This figure alone highlights the dimension of the task.

Nobody leaves their home lightly – not even those who are coming to Europe for economic reasons. But we have to say to these people that they cannot stay, to make sure that we can truly help those who genuinely need our protection from war and persecution. We need a political process involving all regional and international actors to resolve the crisis in Syria – with a greater role for Europe. We have to help Syria's neighbours so that they can offer the millions of refugees decent prospects. The European Commission has thus put forward proposals on an improved financial framework. I would also like to thank the European Parliament for supporting these proposals. The national states must also play their part.

Turkey has a key role to play. It is our direct neighbour and a gateway for irregular migration. Turkey is doing amazing things for more than two million refugees from

Syria. But it needs more support from us – to feed and accommodate the refugees, to secure borders, and to fight human traffickers. For this very reason, the dialogue on migration policy that the European Commission has launched with Turkey is of vital importance. Germany will work bilaterally in support of the Commission's endeavours in this regard. Equally important are the efforts to form a government of national unity in Libya. Europe supports the efforts undertaken by UN Envoy León.

The entire European Union is called upon to address these challenges. In the refugee crisis we must not give in to the temptation to fall back on national government action. On the contrary, what we need now is more Europe. More than ever we need the courage and cohesion that Europe has always shown when it was really important. Germany and France are ready to act accordingly.

We are in full agreement on this with the President of the European Commission, who has put many important proposals on the table, proposals that we now need to implement systematically. We are in full agreement on this with the President of the European Council, who is working tirelessly to improve cooperation with the countries of origin and transit. And we are in full agreement on this with the European Parliament, which in its resolution of 10 September reminded us that national go-it-alone efforts will not solve the refugee crisis. Mr President, we would also like to thank you for adopting unconventional, fast-track decisions. These were important.

For only together will Europe succeed in mitigating the root causes of flight and displacement worldwide. Only together will we succeed in effectively combating criminal human trafficking rings. Only together will we succeed in better protecting the external borders of the European Union with jointly operated hotspots and manage not to jeopardise our internally border-less Europe. I will say it explicitly: we will only be able to successfully protect our external borders if we do something in our neighbourhood to overcome the many crises that are happening on our doorstep, as it were. Only together will we succeed in concluding EU-wide returns agreements, in order to get those people who will not be allowed to stay here back to their countries of origin. Only together will we succeed in distributing the refugees fairly and equitably among all the member states. A first step has been taken. For this too I would like to thank the Parliament, or rather a majority thereof.

Let's be honest, the Dublin procedure in its current form is obsolete in practice. The intention behind it was good, of that there can be no doubt. But, all in all, it has not proven viable when faced with the current challenges at our external borders. I therefore advocate the adoption of a new approach based on fairness and solidarity in sharing the burdens. I welcome the Commission's work in this regard. I think it is good that Germany and France are in agreement on this point.

Equally, it is only together that we will succeed in tackling the huge job of integrating so many refugees. We can rightly expect the people who come to us in Europe to become integrated into our societies. This requires them to uphold the rules that apply here, and to learn the language of their new homeland.

But, conversely, we also have a duty to treat the people who come to us in need with respect, to see them as human beings and not as an anonymous mass – regardless of whether they will be allowed to stay or not. That is why it is so important to uphold the minimum humanitarian standards we agreed on for feeding and housing refugees and for conducting asylum proceedings. We owe that to them, the refugees, and to ourselves.

For Europe is a community of shared values, a community founded on shared rules and shared responsibility. In my opinion this means that we must be guided by the values we have enshrined in the European treaties: human dignity, the rule of law, tolerance, respect for minorities and solidarity. In my opinion it means that pan-European challenges are not to be solved by a few member states on their own, but by all of us together.

We need to realise that it wouldn't help anybody for us to try to completely isolate ourselves, to knowingly allow for the fact that people could come to harm at our borders – certainly not the people concerned, who would still find ways and means of getting here, and not even ourselves in Europe. Retreating from the world and shutting ourselves off is an illusion in the age of the Internet. It would not solve any problems, but would create additional ones, for we would be abandoning our values and thereby losing our identity. If we forget that, we betray ourselves – it's that simple. But if we remember it, we will manage to pass this historic test and will, moreover, emerge stronger from this crisis than we went into it. Then we will manage to persuasively stand up for our values and interests at global level, too. By the way, that is what people outside of Europe, too, expect of us.

Ladies and gentlemen, the reasons why people leave their homelands are all too familiar to us from our own European history. For centuries, our continent was not the destination, but first and foremost the starting point for refugees, displaced persons and migrants. – Jean-Claude Juncker reminded us forcefully of this fact in his state of the Union address. – Today Europe is a region on which many people from all over the world pin their hopes and aspirations – a region that people dream of, in the way that, 25 years ago, I and millions of others in Central and Eastern Europe dreamed of a free and united Germany and Europe.

We have to deal responsibly with Europe's gravitational pull. In other words, we have to take greater care of those who are in need today in our neighbourhood. If we view this challenge as a joint European and worldwide challenge, we will also be able

to identify and seize the economic and social opportunities that this historic test brings. And we will, incidentally, see that the opportunities are greater than the risks.

We will have to continue working hard to convince people of the value of our Europe. François Hollande, after centuries of war and hatred between our two peoples we are today fighting together for shared objectives. I would like to invite all of you here in this distinguished House to work together to convince people of the value of our Europe. Every single MEP can play an important role – in your home states, in your constituencies, and across Europe vis-à-vis the pan-European public.

Let us work together on this, in the manner that Helmut Kohl suggested back in 1989 here in the European Parliament with an eye on the revolutions in Central and Eastern Europe. I quote: “with judiciousness and moderation, with creativity and flexibility”.

Thank you very much.

Source: https://www.bundesregierung.de/Content/EN/Reden/2015/2015-10-07-merkel-ep_en.html?n=393812, access date: 13.07.2018.

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CONTEMPORARY CONCEPTS OF PUBLIC MANAGEMENT. FROM TRADITIONAL MODEL TO PUBLIC GOVERNANCE

WSPÓŁCZESNE KONCEPCJE ZARZĄDZANIA PUBLICZNEGO. OD MODELU TRADYCYJNEGO DO WSPÓŁZARZĄDZANIA PUBLICZNEGO

Summary

The article describes theoretical approach for concepts of public management and public administration. It presents the concepts of public management and public administration on the basis of both Polish and foreign literature. The purpose of this paper is to approach the models of public administration and public management, compare them and find the direction of development in that matter. The article describes and compares the theory of organization and management from the traditional, old model (which has been working for decades) to new models which are still not being used in practice by some countries.

Keywords

New Public Management, Public Governance, New Public Services, public management

Streszczenie

W artykule przedstawiono teoretyczne podejście do koncepcji zarządzania publicznego i administracji publicznej w oparciu o literaturę polską i zagraniczną. Celem artykułu jest przedstawienie modeli administracji publicznej i zarządzania publicznego, porównanie ich ze sobą, a następnie znalezienie dalszego kierunku ich rozwoju. Artykuł opisuje i porównuje tradycyjny model teorii organizacji i zarządzania (który działał przez dziesięciolecia) z nowymi modelami, które w wielu państwach wciąż nie są stosowane w praktyce.

Słowa kluczowe

nowe zarządzanie publiczne, współzarządzanie publiczne, nowe usługi publiczne, zarządzanie publiczne

INTRODUCTION

It has been 100 years now, since the great influencers of Public Management came out with their ideas of developing the notion of management in organizations. The “great

fathers” of organization and management studies: Max Weber, Henri Fayol, Frederick Winslow Taylor, Karol Adamiecki, Elton Mayo, Luther Gulick became an inspiration for other theoreticians and supported the development of theory of organization and management. When we speak about Public Management we have to remember that it is inseparable from the public administration. H. Izdebski and M. Kulesza are defining public administration as “collective activities, actions and organizing and executive projects, provided for implementation of public interests through different subjects, organs and institutions based on the statute and in forms defined by law” [Izdebski, Kulesza, 2004, p. 93]. It means that the scopes of both Public Management and Public Administration are interdependent.

The main raised issue of this paper is the overall outline of changes and the new directions of the approach of Public Administration and Public Management since the eighties/nineties of XX century until now.

In late 1980’s and early 1990’s there was a big transformation in a public sector, especially the growth of spendings for public sector (1960’s–1980’s) which means that the theory and practice of public management had a need for growth of public sector and development of public administration. Because of that, all public sectors became under the challenge nowadays, as it comes to development, scope and the methods of government [Zawicki, 2011]. We can also see some changes caused by the globalization. Changes in public sector are the products of rapid change in the private sector (the management and efficiency of the public sector affect the private one). The other visible features of globalisation are changes in economy and national competitiveness. There appeared a need for improving public which was necessary for better economic performance as public and private sectors are interdependent. Moreover, as it was already mentioned, the private sector depends on the efficient operations of the public sector so administrative requirements are necessary for the functioning of a modern economy with minimum of costs and delays.

1. Models of Public Management

We can see (especially in Poland) some stages of evolution in public sector [Izdebski, 2007, p. 16]. First of them started at the end of XVIII and it is so called, stage of “rule of law”. At that time, administrative law was an important (if not significant) tool, which means that public institutions (and public administration *sensu stricto*) were treated as a tool for controlling and exercising the law. That situation has changed a little bit in the middle of XIX century. At that time administration was no longer a tool for practice of law. When we look at the history at that time (for example in Poland) there was an ex-

planation for that change. Public administration was still a large part of activity of the state and had a big impact on its activity. Notwithstanding, a purpose of that influence was different – thenceforth, public administration became an independent mechanism. It was no longer an instrument only created to exercise the law but mainly to exercise political decisions which had an influence behind law settlements and were specifying the rules of implementing the rules law. This is due to the time in which it started. That stage called by the literature the Public Administration stage was placed at the rough time for all the countries, especially in Poland. Partitions, fighting for independence, unstable governments, beginning of the World War I – it all led almost all the activities of the state to be political and wielded by rulers and government (only at the time when there were any). Basing on the literature, we might call this period a stage of Public Administration which was a traditional model of Public Administration [Izdebski, 2007, p. 17]. In Western European countries we can distinguish subsequent stage at the beginning of 1980's, which is called the New Public Management. It clearly replaced the traditional, centralized, hierarchical, bureaucratic model of management. New Public Management. It turned out that it is unavailing and unable to accomplish the targets to meet the requirements of “modern” society trying to steady and to get rid of after-effects of World War II. As the countries and their governments became more customer-oriented and started the modernization of public sector. It was followed by the model of Public Governance in late 1990's which was “treating public sector and especially public administration as an important element of civil social network (*sensu largo*), remaining with members (individuals, groups) of civil society (*sensu stricto*) through the appropriate participatory procedures and consultations with stakeholders” [Izdebski, 2007, p. 17] and New Public Services as a critique of an alternative to New Public Management. As we can see, all those model came from needs of society that result from its development and changes in regimes, governments, politics etc. in certain countries. However, most of the modern models are focused on similar targets: effectivity of organizing activity in public sectors, organizing activity in public administration, reliance between effectivity of the organization and a state of interpersonal relations, values and atmosphere in a workplace, level of the participation of actions, decision-making processes [Ferens, 1999].

2. New Public Management

Changes that occurred in XX century led to the development of new model of public management. Need for new structures of public administration development of public sectors and local governments, decentralisation of the states led to the creation of new model of public management. This concept was implemented in 1980's and 1990's be-

cause of dissatisfaction of officials and public authorities because of the old, bureaucratic, Weberian model of management which was no longer sufficient for the needs of growing society. Its hierarchical, centralized structure of public administration stopped being adequate enough to the development of public sector within the states. The model of New Public Management was mentioned in the literature in 1991 by Christopher Hood [Kieżun, 2013]. There are different names for this occurrence in different countries as there is no universal term existing in every country-in Baltic states it is called public management but in U.S. there exists a term “reinventing government”, “next steps initiative” in U.K., “free commune experiments” in Scandinavia [Schedler, Proeller, 2000, p.11]. The essence of the New Public Management is that in exercising of public administration the scope of management is more important than the scope of administration which improves the quality customer-oriented public services. In general, the concept of New Public Management is based on the notion of rules which are targeted on better effectivity and rationality in acting of subjects and public services and cuts in the use of resources. The aim of NPM is based on implementation of instruments of management which are being used in private sector to public sector. The main features NPM are:

- first of all: decentralization of organizational structures consisting of division between organizational units-divergence from Weberian hierarchical model (promotion of cooperation and participation in all the activities instead of hierarchy),
- customer-oriented activities (by allowing them a participation),
- outcome/results-oriented activities,
- activities of government focused on mission instead of rules (reduction of the amount of regulations in public sector),
- separation of politics and the state,
- privatization of the services (provided by private sector or NGO’s) and division between public sector (decision-making) and private one,
- changes in organizational culture and organizational structures,
- competitive delivery of services,
- flexible personnel management,
- development of business/market mechanisms,
- “earning” rather than “spending” (focusing on incomes rather than outcomes)
- preventing the problems instead of solving them.

We can also see other factors in scientific literature where only some of them are similar, however it shows the targets set for New Public Management. There might be also: limitation of the governmental tasks only to the most important, development of data processing, management processes defined as the value of production-each step adds a new value to the previous [Kieżun, 2013]. Theoreticians underline the meaning of grow-

ing customers' needs that were a factor for changes in approach to the public management and public administration. The other significant matter is the change in organization on the inside like structure, promotion of ethics, personnel management etc. New Public Management was created to improve management and organization by meeting the expectations of society. In the beginning this new model got a positive opinion but later on as a result of reforms of market and public sector, there was a discussion about the adequacy of NPM that led to creation of new concepts like Public Governance.

3. Public Governance

The concept of Public Governance aroused in early 90s of XX century. Public Governance for the first time was introduced by the World Bank in its documents and assistance programs [Owsiak, 2016]. It is clearly seen in OECD countries (when it comes to analysis). New Public Management did not fully work as it was expected to. Reforms of market and public sector, and attempts for achieving that "effectivity" led to creation of new concept. To some extent, Public Governance was supposed to be a "better version", development of Public Management. Then some questions arised: what are the measures of effectivity? How to adopt NPM's features to the contemporary situation? Criticism of the New Public Management due to the reforms of public sector led to creation of a different model of management-public governance which is based on the division of powers between public sector, private sector and non-profit organizations.

Term governance is an old term used previously in the middle ages. It comes from the latin word "gubernantia". One of the definitions of governance is a „management of the complex communities" [Izdebski, 2007, p. 15]. Likewise to New Public Management, there's no explicit name for Public Governance in every country. For example, in Poland good governance is described as a "zarządzanie publiczne", "współzarządzanie" however there's no officially established name for that model of public management [Owsiak, 2016]. It has its reference point in civic society. As it was said, to some extent it expands the New Public Management model. However, Public Management is strongly based on the contracts where Public Governance is rather based on horizontal relationships (especially when it comes to notions strictly connected to Public Governance e.g. network management, network society). In Poland, Public Governance is mostly based on instruments such as: assessment of the effects of regulations, public-private partnership, participatory budget and public consultations (as it was mentioned that it is focused on a civic society). It is claimed "that the role of good public authority is network management creating conditions and facilitating interactive processes in networks in a way that enables solving problems of insufficient representation or lack of representation and

articulation of interests and consideration of them in an open, transparent and balanced manner” [Izdebski, 2007, p. 16]. The term “public” is used more often as an obvious public good governance becomes not only a model or theoretical structure but an absolutely natural postulate. The new term becomes so attractive for contemporary literature that it often displaces previous terms for example in the OECD structure dealing with public administration now is used the term of Public Governance instead of Public Management [Izdebski, 2007]. So as we can observe, Public Governance slowly replaced NPM. As it is strongly focused on democracy of the citizens and participation, it is emphasized that thinking in those terms of governance instead of NPM or old models, creates a new framework for its (democracy) development. The wonderful foundation (and foundation in theory only, as we can never know how everything look like in practice) is leaving from treating citizens by government as just customers (like in NPM), voters, and letting them solve affecting them situations and problems, what makes them co-decision makers and co-creators of the common good. It should work without the interest of public leaders: professionals in the field of public affairs or politics or public service providers to become interested in partners, teachers and organizers of civic activities, without an electoral democracy and the transition to democratic society – with deepening the civic, horizontal, pluralistic and productive policy dimension [Izdebski, 2007]. As far as the reference point of public management are citizens not only the customers, in the framework of public governance they are being treated as a stakeholders (people who are directly influenced by the activities of government). There is an inseparable term of good governance. Ideas of good governance are related to two basic features of the presence. First of all, they consistently express the liberal principles of the democracy—a society in which different individuals and group interests are represented, should be the source of all political power [Izdebski, 2007, p. 16].

4. New Public Services

The model of New Public Services next to the Public Governance was created to serve as a critique of, and alternative to, New Public Management at the time of rapid change of contemporary society. Public servants must draw their inspiration from theories of democratic governance rather than private sector management theory or traditional political theory [Denhardt and Denhardt, 2003]. New Public Service focuses on some issues which were not fulfilled by the concept of New Public Management. In the scope of public administration, some really important features were to meet the expectations of nowadays administration. Similarly to the Public Governance it is focused on serving citizens, not customers, voters or consumers. It is based on active, involved citizenship. The main target

of New Public Services is to seek the public interest which is different to what it used to be when we consider a traditional model of public administration and public management. That public interest, according to NPS, should rather value citizens and public service than revenues and financial part of governmental activity. The other thing differentiating New Public Services from New Public Management is that there should be no longer an individual interest of the entity, but it should be considered as a wider public interest, shared with other citizens. Public administration should allow them to participate in decision-making processes (as the base of NPS is a democracy) and if any issues arise – to let them solve them or at least participate in reform. That engagement is the most significant part of this theory as democracy is a more less participatory system. Another thing managers should focus on is to “Serve, rather than steer” [Denhardt, Denhardt, 2011] which means that instead of just steering citizens or even more, a society, they should focus on partnership with them, on that mentioned allowance of participation, to work with citizens and make them be a co-decision makers. The government ought to be opened, accessible to make it easier to happen. Management should think strategically and what is really important, value people, not just the results of their work. As it comes to accountability, the forms of it “need to extend beyond the formal accountability of public servants to elected officials in the management and delivery of budgets and programmes to accommodate a wider set of accountability relationships with citizens and communities” [Robinson, 2015, p. 10]. This model is potentially the most attractive one for the citizens, as it meets their expectations as it comes to the participation.

CONCLUSION

As nowadays society is growing and developing, there appears a need for constant changes in a matter of public administration or management that influences entities everyday existence. It is well known that none of the models presented in this paper is the perfect one as in practice there cannot exist utopian vision of government. Times are changing so do the system and the models of it. There is an obvious, massive change throughout the years. One can ask a question: where is it all going to? We can see that all the concepts are heading the way of meeting citizens needs and trying to let them participate in the democratic states which are now finally focusing on the democracy within them. Scientific literature is full of different approaches to new concepts of public administration and public management, which can be studied, but the conclusion will always be the same: government nowadays are living old bureaucratic model created by Max Weber and heading (at least in theory) more horizontal, collaborative, flexible, collaborating administration, opened for the citizens.

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LEADERSHIP IN ORGANIZATION – THE UTILITARIAN ASPECT

PRZYWÓDZTWO W ORGANIZACJI – ASPEKT UTYLITARNY

Summary

The main purpose of the article is to distinguish the concepts of leadership in the public administration and the private sector. This paper contains definitions of leadership and management which play an important role in the public sector organizations. The article indicates selected styles of leadership and draws attention to the need for a pragmatic approach, depending on the situational context. In addition, it highlights the contrast between the leaders currently in power and those who aspire to the highest positions in public administration.

Keywords

leadership styles, public sector, public administration

Streszczenie

Celem artykułu jest identyfikacja różnic dotyczących przywództwa w administracji publicznej i w organizacjach prywatnych. W artykule zawarto definicje przywództwa i zarządzania, omówiono wybrane style przywództwa i zwrócono uwagę na potrzebę pragmatycznego podejścia do przywództwa w zależności od kontekstu sytuacyjnego. Autor artykułu omawia także różnice występujące między osobami aktualnie pełniącymi funkcje liderów a tymi, które dopiero pretendują do pełnienia takich ról w administracji publicznej.

Słowa kluczowe

style przywództwa, sektor publiczny, administracja publiczna.

INTRODUCTION

There is no doubt that leadership in the public administration plays an important role. After the collapse of the communism and the political transformation 1989 in Poland, rational and effective state management gained greater importance. The management process does not exist without appropriate leaders and therefore a concept of leadership and its styles in public administration is essential. The public sector is different

from the private sector – therefore, there is a need for separate research in the field of leadership in public and private sectors. The differences existing in public administration between leaders who currently hold offices and aspiring leaders, are also of note.

Leadership is an autonomous and separate field within public administration research, although the considerations are not as developed as studies of leadership in business administration. Proper leadership skills definitely improve the performance of public sector entities. Numerous thorough studies indicate that public administration leaders are different from those in the business world, so there is a need for a variety of leadership development programs in the public administration focusing on those differences rather than simply imitating programs dedicated to the private sector. What once again aroused interest among practitioners and researchers is the debate on administrative leadership in the public sector [Orazi, Turrini, 2015]. From the early 1980s, the new approach was closely related to the widespread public management reforms in the United States and Western Europe. There has been a shift from management to leadership concept at that time, and as a result, senior officials received greater autonomy leading them to the freedom of choice regarding their style of management. Consequentially a dispute arose between practitioners and theoreticians about the essence of public sector leadership and its similarity to that in the private sector. These groups criticized the so-called PSL – public sector leadership. Disagreements and lack of communication among practitioners and researchers led to the creation of different definitions of leadership in administration and split the debate into smaller elements [Orazi, Turrini, 2015].

1. The Evolution of Leadership Theories

The emergence of the great man theory, established in the 19th century, has made leadership the subject of an organizational research. According to the above theory, leaders are born with certain features of character such as self-confidence, intelligence and emotional literacy. Later on – 2nd half of the XXth century – the researchers focused on matching the style of leadership to the realities of a specific organization. Situational theory, developed in 1969 by P. Hersey and K. Blanchard, and contingency theory, developed in 1950s in the United States, indicate that leaders are effective in a given situation mainly due to their flexibility. Leaders ability to match their style of leadership to a specific situation affects their success. In the late 1970s, the sources of transactional and transformational leadership theories appeared in the literature [Bohoris, Vorria, 2007], and they still constitute basis for the debate about the leadership. The first one consists of, among others, using financial incentives to employees (punishment and reward), while the latter is associated with motivated leaders with a vision of the organization. The lack

of grounds for adopting the “administrative leadership” approach for some period of time resulted from regulatory procedures, political authority and was related to the low level of control over the public administration. This approach to the public administration leadership, however, has since changed.

In 2003, Van Wart published the article *Public sector leadership theory* assessing leadership and its importance in the public sector. According to Van Wart, interest in the above topic resumed with the debate on the transactional and transformational style in the 1980s. The way in which public administration was organized prompted researchers to contemplate the new phenomenon of leadership in the public sector, and four main areas of the above should be observed according to Van Wart [Van Wart, 2003].

2. The Concept of Leadership in the Public Sector

Management and leadership are often understood as identical concepts. Nothing could be more misleading – contemporary corporations, organizations and academic circles delimit those terms, pointing out their different features. According to the scholars, it is very important to understand these concepts separately [Bohoris, Vorria, 2007]. It shall be pointed out that the first area became the problem with regards to the definition. Furthermore, it is linked with the question whether leadership in public administration is a separate topic or it is derived from the management theories. The second issue is an attempt to answer the question whether leaders are created or are they born? The third area combines the two previous ones, namely the answer to the question: which leadership style is the most appropriate. The last question referred to the impact of the public sector on the particular groups and organizations. In the light of above questions it seems that public sector can be understood as the process of delivering specific results through legal and effective ways and as the process of development and support of entities providing results, adjusting the organization to the environment (rationalism) [Orazi, Turrini, 2015].

Leadership and management in the public sector are concepts based on a common ground in modern times. Various management concepts and leadership in public administration can be sought among civil servants at various levels of public administration structure. One can distinguish public managers, achieving efficiency using data management techniques, and administrative leaders proactively supporting line managers, providing the right tools. Leaders of the public sector are struggling with greater bureaucracy and a higher level of formalization of procedures – in comparison with their private counterparts (mainly in areas related to employment and public procurement). The leaders of the public sector indicate a definitely lower satisfaction with their profession due

to numerous limitations. However, they are characterized by a higher motivation in relation to the provisions of public services [Orazi, Turrini, 2015].

We can observe many national programs regarding the development of leadership around us. They are based on the assumption that everyone is a potential leader and that the appropriate program is able to extract this quality from every person. Such projects focus on shaping strategic thinking, achieving results and communicating with the surrounding environment. Those who are sceptical about such programs argue that their implementation in the given countries is too vague, i.e. without paying attention to professional practice and specific realities. In addition, there are voices about how to run these programs in practice, without taking into account communication, interpersonal relations or motivation. The solution to this problem could be the initial selection of people who already have some potential leadership skills and educational background from those who pretend to be employed in public administration or are employed in public administration [Orazi, Turrini, 2015].

Each organization should be efficiently directed in order to achieve its goals and tasks in a better way. German philosopher Max Weber said that for this purpose a bureaucratic apparatus can be developed, supervising the hierarchy of the service or using informal sources of power. This statement underlies the distinction between management and leadership. The approach to leadership in public administration has changed over time. For the majority of the twentieth century, it was included only in the bureaucratic legal and procedural framework developed by Weber [Szczupaczyński, 2014]. Then, under the influence of efficiency requirements, and in particular the need to rationalize budget expenditures, the new public management concept was created. It introduced, among others, result oriented approach of the public management, treating public service recipients as clients, and using enterprise-specific management tools such as performance-based bonuses and performance indicators. Implementation of new public management is, however, associated with competency problems due to the requirements of officials' skills so far relevant for business management [Wytrązek, 2010]. Among other things, this is why the search for an administrative leadership model is evolving [Gigol, 2016].

Leadership has many definitions. The expert on management, Peter Drucker came to the conclusion that the only definition of leadership is the ability to indicate who has followers. To get supporters, one needs to influence the environment. Some researchers argue that leadership is no different at all from social influence, that is, a wider-scale process, and others that it is all that a manager does to effectively run the organization [Drucker, 1993].

Now, the following question can be once again: are public leaders born or created? The answer to the above question is relative, often even the predispositions are not enough without the contribution of hard work from the leader. The charisma and vision are not enough without, for example, reliable technical (substantive) background and general insight into the situation [Bohoris, Vorria, 2007].

Management is an art and science in one. It serves to achieve specific goals of the public and private sector. It is a process in which the tools and specific procedures are used to maximize the institution's profit. One can say that management is more technical and requires less creativity from leadership. It is the use of an appropriate instruments and coordination in a proper way with people, taking into account the realities of the serviced institution. A properly functioning organization has both good managers and leaders who complement each other. Only thanks to the right proportion of the above managers it is possible for the enterprise to succeed on the global scale or for e.g. state or local government to function properly [Bohoris, Vorria, 2007].

Managers in the public sector are people commissioned to supervise the execution of administrative tasks and key planning of future activities of the institution. Their competences include creating budget plans, solving organizational problems and controlling subordinates. On the other hand, leaders motivate and inspire people to work – they influence employees thanks to their soft skills (e.g. interpersonal relations) [Kotter, 2001, p. 2]. Good leaders have infinite layers of passion, energy and courage. The organization needs both analytical minds, introducing appropriate behaviour patterns, as well as passionate souls who support and motivate everyone around. It cannot be denied that the contribution of leadership and management plays a key role in the proper functioning of the institution [Bohoris, Vorria, 2007].

3. Selected (Public) Leadership Styles

One can distinguish several styles of leadership. Any situation or problem to be solved requires an individual approach, hence there is no single leadership style. However, there are some features of character that increase the effectiveness of leaders managing people. One of them is emotional intelligence, i.e. a higher level of empathy and understanding of the environment. Without it, a leader might have a lot of knowledge and many ideas but no possibility of implementing them. This does not mean that technical or IQ skills are irrelevant but they can be placed on one level (with emotional intelligence) in the hierarchy of values for the leader [Goleman, 1998].

Emotional intelligence of leaders can also be associated with high performance of the organization. David McClelland, a well-known researcher, found that senior rank-

ing managers (characterized by empathy) achieve better results than their “cold” counterparts [Chmiel, 2003, p. 337]. The findings of the above researcher were applicable in both American, Asian and European branches. This shows us how important the emotional intelligence has for both the private and public sectors. Importantly, research shows that people are able to learn and develop in this field. Emotional intelligence consists of the following elements:

1. self-awareness – which means the ability to recognize and understand your moods, emotions, and drives, as well as their effect on the others,
2. self-regulation – which means the ability to control or redirect disruptive impulses and moods, the propensity to suspend judgment-to think before acting,
3. motivation – understood as passion to work for reasons that go beyond money or status, a propensity to pursue goals with energy and persistence,
4. empathy – the ability to understand the emotional makeup of other people, skill in treating people according to their emotional reactions,
5. social skills – understood as proficiency in managing relationships and building networks, an ability to find common ground and build rapport [Goleman, 1998, p. 88].

Just like with the question about the innate predispositions of being a leader, the idea arises whether we acquire emotional intelligence with birth? Are we gifted with it by nature or is this the result of our experience? Research on this subject is not conclusive because, on the one hand, science proves that there is a gentle connection (i.e. predispositions) and, on the other, confirms that empathy can be learned through experience and our upbringing. One thing is certain that emotional intelligence increases with our age, i.e. matures with us. Despite the mature age, people still need training and education in this area, however it cannot be an episode but a continuous process aimed at raising awareness of broadly understood empathy [Goleman, 1998].

The literature about leadership styles can be divided into several stages. The first focuses on identifying the personality traits of successful leaders. Trait theories argue that well-known leaders have certain inborn traits, i.e. they are born a certain way, which distinguishes them from others. The next phase is the “style” and “behavioral” approach to leadership – emphasis is placed on behavior and style instead of the current characteristic [Koech, Namusonge, 2012, p. 1]. One of the main results from the above studies is the bringing of more successes by leaders in a democratic or participatory style. It can be noticed that both the first and the second phase concentrate mainly on the extraction of the best leadership pattern (based on characteristics or style and behavior). The elemental obstacle of the second stage is to ignore the situational factors that should be understood by the leader in order to match them with the surrounding reality. Some of the recent studies have opposed “transactional” and “transformational” leadership.

The first is called instrumental, focusing on a simple exchange with subordinates, and the last one is synonymous with visionary and enthusiasm motivating subordinates [Koech, Namusonge, 2012].

It can certainly be said that research on the leadership has gone through a crisis of skepticism, and the current interest in the above topic has focused on the role of the leader for the entire organization. The efficiency of the public sector for example, is measured by the contribution and effectiveness of its leaders. The contemporary classification of leadership divides it into several individual styles. Using the charismatic approach, we distinguish laissez-faire (so-called non-leadership), transactional (a system of penalties and rewards for subordinates) and transformational (based on inspiration and motivating employees) leadership [Koech, Namusonge, 2012].

The laissez-faire style is represented by passive leaders who almost always avoid confrontation or even meeting with their subordinates. One can say that this is a more extreme approach than liberalism. In addition to the lack of negative intervention, laissez-faire is also characterized by total indolence in the context of any form of cooperation with the subordinate. The liberal approach doctrine means lack of interventionism, but not complete abandonment of the contact with individuals [Koech, Namusonge, 2012]. It is assumed that laissez-faire is associated with the unproductivity and ineffectiveness of the organization. Transformational style of leadership encourages subordinates to put extra effort and to go beyond the accepted scale. Units subordinate to such a leader are loyal, trusting and feeling respectful towards their superior. In addition, the above style is characterized by greater motivation of employees to additional activities. Interestingly, transformational leaders achieve better results thanks to their subordinates because they are able to inspire them. It was also found that this style of leadership is related to the efficiency of the public units. Leadership is an art of motivating people to achieve common goals. Leadership is the influence and manipulation (in a positive way) of subordinates for the common good [Koech, Namusonge, 2012].

The transactional style of leadership is based on an exchange between the supervisor and the subordinate which manifests itself through the performance of the employee's actions for the reward specified for him. Supporters are rewarded if they meet a certain standard or enter the appropriate criteria. The above style aims at motivating employees with a tangible gratification and getting them to comply with the rules and principles. The transaction does not necessarily have to be positive for its participants. In the event of failure to perform a task, failure to comply with its duty, the leader may punish the employee by, for example, exemption or order to cover costs. This ensures a sense of responsibility for the orders given to both the subordinate and the supervisor

who, despite the delegation of the task, is still responsible for them [JSS Academy of Technical Education INDIA, 2014, p. 58].

One can also distinguish the concept of authentic leadership which was created in response to the governmental corruption scandals at organizations' top management level in the United States (turn of the 20th and 21st century). The debt crisis in public administration is the reason for the increased interest in ethical aspects of leadership in the public sector [Wytrążek, 2010]. A fundamental element in the theory of authentic leadership is the concept of authenticity. It means everyday awareness of one's own personal experiences, including thoughts, emotions; acting in harmony with your true self and expressing what you really think and believe. To the above, there were added elements adapted from the other theories, e.g. the theory of transformational leadership and ethical leadership. The component of self-awareness was taken from the theory of emotional intelligence. The theory of authentic leadership is in the maturing phase, but numerous studies have shown its value and usefulness to explain processes related to leadership and its impact on employees [Gigol, 2016]. There was a clear positive influence of the leader's true leadership on subordinates in terms of achieved results and commitment and other elements of team behavior. Authentic leadership of superiors influences the results achieved by employees and the sense of satisfying basic needs by groups of employees. The above concept reduces the probability of so-called professional burn-out and the desire to leave work and contribute to lower levels of emotional exhaustion, regardless of the level of professional experience. Based on the research, it was noted that the positive interaction effect between the leader and the subordinates is strengthened in the groups of employees through the effect of social learning [Gigol, 2016].

In addition to above three main leadership styles, the following are also presented in the literature:

1. autocratic and democratic – research shows that employees operating in a democratically managed environment do not act under the same pressure as their autocratically-run equivalents. What is more, the results indicate a better performance of subordinates in the organization and their much better level of well-being. The autocratic environment is characterized by eternal fear of the superior and a feeling of humiliation by the authorities. The atmosphere and a positive approach to life by co-workers definitely positively affects the quality of services provided by the public sector [Omolayo, 2007, p. 33],
2. participative, supportive and instrumental – the supportive leadership concept goes back to research in which its four basic features have been distinguished: encouragement to participate, widespread sharing of information and power, efforts to strengthen the employees' self-esteem and motivating employees to perform

various work tasks. Instrumental leadership is associated with the leader's leadership and is characterized by behaviour aimed at organizing the work of employees by giving them clear instructions. Contrary to participative leadership which is defined as "a common influence on the decision-making process" [Łukowski, 2017, p. 113]. In both cases, the ultimate decision-making power lies with the leader. The main differences concerns both the extent to which leaders consult their subordinates and the extent to which they have the right to express their views in the decision-making process. Essentially, instrumental leadership and participatory leadership are perceived as extreme [Pedraja-Rejas, et. al., 2006].

Robert K. Greenleaf presented in his essay from 1970 under the title *A Servant as a Leader* the idea that a good leader should be a servant [Greenleaf, 1970]. According to him, a conscious choice results in the transformation of a humble servant into an influential leader. There is an interesting paradox here because the subordinates are considered powerless and not as those who are able to turn into good managers later. A servant helps others through his empathy and experience. She/he is closer to lower-level work, in contrast to managers often detached from reality. She/he is guided by care, not by manipulation. A servant is aware of the needs of people at his professional level and knows the organizations from scratch. By transferring it to the public sector, the manager who previously was a lower-ranking official will be considered a better leader due to the knowledge of the environment in which she/he works and because of his trainee authority [Hanson, 2011].

Characteristics of the servant's leadership are: skillful listening, empathy, awareness, persuasion, anticipation, management, commitment to human development and community building. Those are the signs of the servants who decide to become leaders. Servant leaders are focused on ethical behaviour, rely heavily on teamwork and engage others in decision-making. This philosophy is a holistic approach, improving our institutions, building a community and promoting personal growth among employees. The servant has to examine whether other priority needs of people have been handled – are they becoming smarter and more autonomous? Servant leaders should focus on doing the most important things. They are able to encourage their subordinates to engage in personal development. In this way, the servant leader offers a higher level of service to others. This approach creates a level of responsibility possible only among highly independent employees [Hanson, 2011].

What the elected officials have to think about are the motives of their work in the public sector. They have an obligation to verify their commitment to serve the citizens and the entire state. Work in the public administration is supposed to serve the residents and solve problems they have. The management at the state and local government level

combines it with continuous work to improve the quality of services provided by national institutions. Pointing to service as one of the highest values in the public sector, leaders encourage subordinates to ethical and proper conduct. Managers must carefully listen to employees' concerns for which emotional intelligence is necessary. Because public sector officials and managers reflect changes in the environment, they are tasked with constantly monitoring the upcoming numerous changes and adapting their activities to them [Hanson, 2011].

4. Current and Pretending Public Leaders

Current leaders are constitute political elite of every state. As a rule, the first are leaders who hold top office positions in public administration or other specific socio-political organization. They have titles such as prime ministers, chancellors, presidents or even kings. They are distinguished from other leaders by making strategic decisions for a socio-political organization in a sustainable manner. A modern state leader builds his or her own political base by belonging to a particular party. What is worth emphasizing, is that the candidates for power are usually state leaders and self-government leaders, i.e. above all, officials holding a certain authority at higher levels. Pretending state leaders in the strict sense are politicians including ministers in the government, the office of the president or holding independent positions (e.g. presidents of institutions) [Sielski, 2012].

Current local government leadership includes three aspects: territorial, subjective and objective. The municipalities and counties are local self-government units. It is mainly at these levels that tasks are performed to satisfy the collective needs of residents in accordance with the binding legal acts. In the subjective sense, this means councilors and representatives of executive bodies elected in a direct or indirect way. The subject aspect is related to the political option. A current leader should issue strategic and permanent decisions, have adequate political facilities and occupy the highest position in a given system. [Sielski, 2012]. Only three offices in Poland (in the case of local self-government) are able to create current leaders like village mayors, mayors, and city presidents. Arguably only these three types of local leaders fulfill at least four from presented above leaders' attributes. First of all, they occupy the highest position in a semi-hermetic political system. Secondly, they make strategic decisions, shape the budget structure (expenses and income), perform executive functions, issue administrative decisions, and have numerous competences from the public and legal sphere. Thirdly, leadership is of a lasting character, i.e. the office is held for a certain period of time, currently for a maximum of two terms. Fourthly, the local government leader should have appro-

priate political support in the form of a political party, a socio-political organization, to convince a larger part of his community's voters [Sielski, 2012]. Pretenders are those politicians who do not have the above-mentioned attributes. For example, the voivode is a representative of the government, so she/he does not occupy the highest position in the system, she/he does not make strategic decisions. She/he only receives orders from higher level authorities. In communes, the pretenders are chairmen of the council (subject to, for example, village mayors, mayors, city presidents) and in counties, district heads. Several more types of pretending local government leaders can be distinguished. The first is a leader with party power (she/he performs, e.g. local government positions), the other is a media leader – e.g. the former presidents of cities, the so-called “faces of the party”, and the last one is an informal leader, i.e. having a substantive layout, e.g. experts in a given field [Sielski, 2012].

CONCLUSION

The above considerations showed the multidimensionality of leadership. The literature of leadership styles review emphasized the importance of the so-called emotional intelligence in leadership. A number of research have shown that besides technical ability, leaders (from private and public sector) need a dose of empathy. Today's most recognized leadership scheme is its division into transformational, transactional and the laissez-faire one. The work contains a description of all the above. Choosing the most advantageous form of leadership in public sector is not an easy task. No single leadership style can be considered the best. It depends on the people, tasks, type of organization and situation. Therefore, every leader should always be guided by his/her intuition, experience and case-by-case approach.

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ELON MUSK'S BUSINESS STRATEGY AND LEADERSHIP MODEL

STRATEGIA BIZNESU I MODEL PRZYWÓDZTWA ELONA MUSKA

Summary

Article describes Elon Musk's business and innovative solutions that will shape the future of whole planet, the new, confident way of managing business and how to become a successful leader.

Keywords

technology, innovation, future, business leadership

Streszczenie

W artykule opisano rozwiązania biznesowe oraz innowacyjne działania, których autorem jest Elon Musk, a które będą miały wpływ na przyszłość naszej planety. Przedstawiono charakterystykę nowego i odważnego sposobu zarządzania biznesem oraz w jaki sposób stać się liderem odnoszącym sukcesy w biznesie.

Słowa kluczowe

technologia, innowacja, przyszłość, przywództwo w biznesie

“Musk has taken industries like aerospace and automotive that America seemed to have given up on a recast them as something new and fantastic.”

[Vance, 2015]

INTRODUCTION

Elon Musk is known mostly as a CEO of Tesla, SpaceX and SolarCity. But his history didn't start and at those companies and projects. He started his story with technology at age 10, when he received the Commodore VIC-20 and thought himself a computer programming and sold for US\$500 the code of BASIC-based video game called

Blastar to the magazine PC and Office Technology [Belfare, 2007]. That was the first money he earned.

In 1995, with his brother Kimbal and Greg Kouri, he created his first start-up – Zip2 [Strauss, 2017]. This was a web software company, with capital raised from a group of angel investors, and it was an online city guide for newspapers. It was acquired by Compaq company in 1999 for US\$307 million and US\$37 million in stock options. Musk received US\$22 million from his 7 percent share from the sale [Vance, 2015] at age 27.

After selling Zip2, in 1999, Musk co-founded X.com with US\$10 million from the sale, online financial services and payment via e-mail. This was one of the first online banks. One year later, in 2000, the company merged with Confinity, the biggest competitor which had money-transfer service called PayPal. Then Musk was the biggest shareholder and became CEO (he was released from this role due to disagreements with other company leaders the same year, but stayed as a member of the board). In 2002 PayPal was acquired by eBay for US\$1.5 billion in stock. From 11,7 percent PayPal's share Musk gain US\$165 million [Penenberg, 2012].

Another company that Elon Musk co-funded is SpaceX, a company known mostly for launching Falcon Heavy¹ with Tesla roadster² (called Starman to tribute for David Bowie) that supposed to reach Mars in July, and also of private space program which target is to colonize Mars in 10 year time, and as well of program or rocket airlines which will permit space travels from two different end of the world in only one hour or less as says Gwynne Shotwell. [Shotwell, 2018] SpaceX was founded in 2002, with US\$100 million that Musk invested from his own pocket [Vance, 2015].

Tesla Inc. was co-funded in July 2003 by Martin Eberhard and Marc Tarpenning, who financed the company until the Series A round of funding. Both men played active roles in the company's early development before Elon Musk's involvement. Musk invested US\$70 million of his own money into that project. In 2014, Musk announced that Tesla would allow its technology patents to be used by anyone in good faith to entice automobile manufacturers to speed up development of electric cars. Right now Tesla is facing some troubles with financial loses, but as Musk says, in quarters 3 and 4 of 2018 there will be finally noted income of the company.

Strongly connected to SpaceX and Tesla is another company of Musk, which is SolarCity. Musk provided the initial concept and financial capital for SolarCity, which was then co-founded in 2006 by his cousins Lyndon and Peter Rive. Musk invested US\$10 million of his own money into that project. In 2012, Musk announced that SolarCity and Tesla are collaborating to use electric vehicle batteries to smooth the impact of rooftop solar on the power grid, with the program going live in 2013. What is more, SolarCity

is a company that is providing electricity to factory's of Tesla and SpaceX. On June 17, 2014, Musk committed to building a SolarCity advanced production facility in Buffalo, New York, that would triple the size of the largest solar plant in the United States. Musk stated the plant will be "one of the single largest solar panel production plants in the world", and it will be followed by one or more even bigger facilities in subsequent years.

Elon Musk is as well sponsor and co-founder of other projects that will shape future of a humankind, and this is OpenAI and The Boring Company. OpenAI was founded in December 2015. It is a not-for-profit artificial intelligence (AI) research company. OpenAI aims to develop artificial general intelligence in a way that is safe and beneficial to humanity. By making AI available to everyone, OpenAI wants to "counteract large corporations who may gain too much power by owning super-intelligence systems devoted to profits, as well as governments which may use AI to gain power and even oppress their citizenry" [OpenAI, 2018]. One year later, in 2016 while Musk was stuck in the traffic, he had an idea, that currently is known as The Boring Company (see: Visualisation of tunnels of The Boring Company). Then he tweeted "Am going to build a tunnel boring machine and just start digging..." [Musk, 2016]. In February 2017, the company began digging a 30-foot-wide, 50-foot-long, and 15-foot-deep "test trench" on the premises of Space X's offices in Los Angeles, since the construction requires no permits.

1. Innovation

What is particular about Elon Musk's example of entrepreneurship and leadership is the innovation. As we can observe from his history of companies, every idea he had was innovative and one of the kind. Peter Thiel said "We wanted flying cars, instead we got 140 characters" (Maximum in post on Twitter, user can use 140 characters.). And Jeff Hammerbacher, an early Facebook engineer observed "that the best minds of my generation are thinking about how to make people click ads" [Vance, 2015]. When most of people at Silicon Valley focused at online and internet development, being sure that they are inventing the future, but Elon Musk went forward and made his craziest ideas coming true. It is not an easy thing to bring to life, because it requires a lot of courage, confidence and money resources, that possibly only Musk was able to invest all of his money into projects that everybody at the beginning were not even thinking seriously and seemed unrealistic and unachievable.

Innovation by Merriam-Webster dictionary is defined as a new idea, method or device and introducing something new (Innovation, n.d.). Innovation is much related to invention, but not the same [Bhasin, 2012]. To understand it better. An invention is the creation of a product or introduction of a process for the first time. For example

Thomas Edison was an inventor. On the other hand, innovation happens when someone improves on or makes a significant contribution to something that has already been invented. Apart from Elon Musk, Steve Jobs as well is excellent example of an innovator [Bhasin, 2012].

One of the most innovative ideas for a humankind was the wheel, electricity, the aeroplane or the telephone. Of course, no one can say that in last decade there was no innovation in the other areas. Areas like the telecommunication or robotics were extremely developed and we can observe it only by taking into our hands last 5 mobile phones that we have owned and notice the difference in the parameters and design. That was the main areas that our world had focused on in last years. But ideas like Mars colonization, 100% electric cars, using at own home only solar energy, from own solar factory or AI development were mostly know from science-fiction movies, not from the real life.

Innovation cannot stop only by creating something new. The most difficult part is to inspire a society and acknowledge them with the profit coming from it. Regarding Elon Musk's innovative ideas, they are important for all humankind. With the climate change and fast growth of world population, contamination of the environment in every part of the globe we need to find another solution to survive and keep the Earth in good condition. That is why Elon Musk went much forward with his business because the world population in the era of him was suffering from decadence.

2. Visionary Leadership

To understand what a visionary leadership is, essential may be to explain first what is a leadership. Anthropologists analysing homo sapiens behaviour observed that already during the Cognitive Revolution there existed individuals that lead the tribes and groups with a special character features, and it was not all about a strength as is commonly thought, but about a communication skills and relationships with other members of a tribe. Since then this concept was only developed but it is based on the same motives [Harari, 2011, p. 29]. Nowadays leadership is understood as an ability to manage plans, targets and achieve goals by taking an initiative, fast decisions and decisive actions. It is mostly a part of a character, natural feature of someone that comes easy and may help with life success. People that have that attribute usually finishes at high positions in a business or a political world. But it is not all, good leadership requires a clear vision, confidence, ability to coordinate and balance the own environment during conflict and peace time. Currently with the development of studies about human nature was possible

to difference few types of a leadership, like for example autocratic, democratic, bureaucratic, charismatic, team or visionary leadership.

Elon Musk is an example of the visionary leader. He dreams about stuff that no one else would dare or no one else would be capable of dreaming at the level of complexity that he does. He has an ability to think at system level of design that pulls together design, technology and business, and that requires a lot of confidence and coming from that ability of crazy risk taking. This type of leadership involves a personality that recognizes, that methods, steps, processes of leadership are all obtained with and through people. They have a nature that they will do everything to transform their ideas and plans into reality. They are good with communication skills and management and they have a talent of inspiring other people with their visions, which they will keep like their personal ideas and do everything to achieve it [Patrick, 2018].

Visionary leaders, especially in business, are effective at leading a workers to achieve a common goal. These leaders promote organized learning, creativity, and the development of strong relationships within the team.

Daniel Goleman, in 2002, in his book points out 4 types of leadership: visionary, coaching, affiliative and democratic. He observes there that only emotionally intelligent leaders are able to create a climate of enthusiasm, where people can feel most innovative and give their personal best at work. He defines visionary leadership as follows “This kind of leadership moves people towards shared dreams. Visionary leaders help people to see how their work fits into the big picture. People get the feeling that their work matters and they also understand why. To articulate a truly inspirational vision, the leader must be able to sense how others feel and understand their perspectives. This kind of leadership style is particularly effective when the business is badly in need of a new vision or has to be turned around” [Goleman, et al., 2002, p. 57].

By following an actions of Musk he fulfil all requirements of a visionary leader. From the statements of his co-workers and employees we know that he is not an easy person to work with. As Gwynne Shotwell observed, the biggest challenge of working with him is that, that he never accepts “no” as an answer [Shotwell, 2018]. By himself he is very committed to work, even when he was younger and working at Zip2, he was sleeping next to his desk, and he asked his workers “kick me when you will come to wake me up” [Vance, 2015]. Right now he is working usually 6 days per week, sometimes 7, trying to make his best and to force people to do their best. He is verbally assaulting everybody at work, and as Ashlee Vance observed “you love Elon, or you hate him” [Vance, 2015].

3. Tesla

Tesla's main mission is to accelerate the world's transition to sustainable energy. In 2003, when the company was founded, the world was far away from the idea of electric vehicles. For April 2017 they were regarded as the most valuable automaker in the U.S., overtaking General Motors and Ford. This is partly attributed to the launch of the Model 3, an incredibly popular electric affordable five-seater. But his new car is only one aspect of an impressive success story which shows just how important it is to embrace, and even cause, disruption [Cox, 2017] Tesla become so important company because it has a US\$50 billion equity value and massive media presence. But what is important has sold fewer than 350,000 cars in total – all at a loss. It has little experience in repair, used sales, recycling, scrap and waste. It is not near scale or profit on any of these other parts of the business. On the contrary, Ford also has a total equity value around US\$50 billion, but they sell around 6.5 million cars per year all around the globe. Not like Tesla, they have stable post-sales businesses, what is coming from more than 100 years of experience on vehicles market, all the way through recycling and waste management [Anderson, 2018].

The company is successful not only by design of cars and modern marketing actions, but also by its business strategy. Official business strategy of Tesla Inc. is a very particular one.

So, in short, the master plan is:

- build sports car,
- use that money to build an affordable car,
- use that money to build an even more affordable car,
- while doing above, also provide zero emission electric power generation options,
- don't tell anyone [Musk, 2006].

In different words, Tesla Inc. has three stages of manufacturing cars, Step one was to build expensive cars, with average price US\$100,000 at low volume, step two in which the company is currently is build medium-priced cars, with average price US\$50,000 at medium volume and at step the to build low price cars, with average price US\$30,000 at high volume [Musk, 2013].

Particular in case of Tesla is as well way of selling those cars. Like with every other brand like Fiat, Ford, Mitsubishi to buy a new car, the customer have to go to official dealership of those brands and buy it. Not in the case of Tesla. By entering the website of Tesla, everybody can personalize future car, choose payment method, and later on wait till factory in California will manufacture the car and will ship to the customer house.

100% shop online [Tesla, 2018]. It is very innovative solution, because to the price of the product are not added extra costs like renting a real estate to have a dealership or to pay salary to bigger amount of workers etc.

What is more, by buying a Tesla car, the charging of it, is for free entirely. In many countries still there is no infrastructure, but this is a problem that will be resolved in close future. [Musk, 2013]. Thanks to that, another plus for a customer is long distance perspective for making savings on the fuel that was used to the traditional petrol car.

CONCLUSION

Elon Musk definitely gave some new fresh air not only for world innovation but as well opened mind of many people. As Ashlee Vance observed in her book “When Mark Zuckerberg wants to help you share baby photos, Musk wants to... well... save the human race from self-imposed or accidental annihilation” [Vance, 2015]. Even if he is a difficult and complicated person and leader, definitely every entrepreneur should take him like an example or at least acknowledge his history and never forget that the world of innovation and confidence, is our future. He is an example that everybody's childhood dreams even if they seem difficult to achieve are possible. And there are no limits. Every future leader and entrepreneur have to be able to take risk. Elon explains his actions in easy statement “I'm not trying to be anyone's saviour. I'm just trying to think about future and don't be sad” [Musk, 2017].

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NOTES

¹ Falcon Heavy is the fourth-highest capacity rocket ever built after Saturn V, Energia and N1.

² The Tesla roadster with manikin of spaceman is called Starman like a tribute for David Bowie, which Elon Musk is very big fan.

In the present era of globalization, europeanization and liberalization, the interaction between the nations of the world is increasing. Therefore, it is currently impossible to perceive public administration and administrative law purely in the national context. The same applies to business administration and public management.

The articles published in the book constitute the outcome of the lectures delivered during the Second Seminar of Students of Administration in International Organizations, Bachelor of Business and Administration and International and European Law programmes *Comparative Perspectives for Public Administration and Administrative Law*, which was held at the Faculty of Law, Administration and Economics of the University of Wrocław on 14 March 2018. The lectures given at the Seminar, the articles prepared on their basis and the high attendance level at the Seminar have shown that there is still a need for comparative studies in the area of public administration and administrative law.

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