

# Chapter I

## Polish Public Administration

### I.1 The term ‘administration’

I agree with the opinion of Professor Hubert Izdebski, who said: ‘It is sometimes said that in 1989, as a result of the ‘Round Table’ agreements of the representatives of the government and of the ‘democratic opposition’ followed by the parliamentary elections in June, which were won by the opposition, Poland entered its ‘period of transformation’. It was a transformation from decaying ‘real socialism’ into a liberal democracy, based upon principles of the democratic state of law and market economy as well<sup>7</sup>.

The word **administration** (*administracja*) is etymologically linked to the Latin word *administro, administrare*, which means to serve, conduct or manage. Today, the term ‘administration’ is defined in several different ways. We can speak specifically of **private administration** (*administracja prywatna*), which is comprised from a board of directors, management, some sphere of matters for private use and of **public administration** (*administracja publiczna*)<sup>8</sup>.

**Administrative law** (*prawo administracyjne*) does not deal with private administration. Rather, administrative law usually interferes with private administration, as in the constant inspection or supervision of public organs<sup>9</sup> (governmental authorities) over ‘privatized public tasks’ or

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<sup>7</sup> H. Izdebski, *op. cit.*, p. 109. We must also admit that the origin of the democratic changes and the role of the ‘Round Table’ remain controversial subjects in contemporary political discussion. Nevertheless, we can certainly agree that, for Poland, the year 1989 marks the beginning of a return to democracy after 44 years of Communist occupation.

<sup>8</sup> As it was said before, in Polish legal language (and in the Polish language in general), the English term ‘administration’ goes with the additional word ‘public’. Therefore ‘public administration’ is the name for the whole apparatus of public authorities, their auxiliary entities (like offices) and other bodies authorized by laws or arrangements to exercise state power.

<sup>9</sup> The Polish legal term ‘organ’ and its comprehension will be presented in Chapter 6 of this book, concerning public authorities.

commissioned functions of state administration<sup>10</sup>. Undoubtedly, the term ‘public administration’ is fundamental to administrative law. Nevertheless, there are some in Polish literature, such as Franciszek Longchamps, who believes that the terms ‘administrative law’ and ‘public administration’ should be researched separately.

In the midst of such a variety of interpretations of public administration, this course book relies on the definition suggested by Jan Boć. According to this author, **public administration** is understood to be ‘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’<sup>11</sup>. It is possible to illustrate this definition by considering exemplary negative and positive definitions of public administration.

The **negative definition** (*definicja negatywna*) is considered the classical one and was created by German thinkers Otto Meyer and Walter Jellinek. It was Stanisław Kasznica and Antoni Peretiałowicz who made their adaptations to suit Polish needs. The basis for the original definition was Montesquieu’s rule of three divisions of authority. According to that definition, public administration is everything that is not legislative power or administration of justice. In other words, administration is the state activity that occurs outside of the legislation and administration of justice.

The **positive definition** (*definicja pozytywna*) of public administration stresses those elements that perform administrative functions. The term ‘public interest’, which is an element of public administration, identifies the structure of the subjects which perform the administration. In this manner, we come to the **subjective definition** (*definicja podmiotowa*) of public administration, which takes the perspective of the subjects of administration to define those bodies that exercise administration and the nature of their structure.

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<sup>10</sup> In Polish doctrine, the term ‘privatization of public task’ is described as a set of elements including mostly an exercising of power to manage the public property on non-public bodies. Sometimes, it deals with transgression of statutory powers; see: S. Biernat, *Prywatyzacja zadań publicznych. Problematyka prawna* [Privatization of Public Tasks. Legal Issues] for more detail.

<sup>11</sup> J. Boć (ed.), *Prawo administracyjne* [Administrative Law], Wrocław 2003, p. 16.

The **objective definition** (*definicja przedmiotowa*) takes the perspective of the bodies of law to describe which motions are included in administrative activities. It, therefore, defines public administration as an activity of administration conducted by competent subjects (bodies).

## **1.2 Features and functions of public administration**

A fundamental feature of public administration is that it is a social phenomenon. All of its other features stem from this fact. The most important prerequisite of the social character of public administration is that it regulates social coexistence. Therefore, it must be oriented towards the public interest. Public administration, both as an organization and activity, is based on law and acts within the limits of law, though it may occasionally refer to customs adjudications and technical norms.

The administration (as an organization) acts on behalf of and on account of the state or the local self-governing community. They are a statutorily empowered authorities. This means that they may use coercive measures secured in binding law. Public administration as an organization always acts as a non-profit entity. Even if it conducts profit-oriented activities (management), these do not constitute its main purpose but they are rather an indirect pursuit of the public interest. Public administration as an activity is always characterized by its purposefulness, action and initiative. Public administration should always use professional personnel, so-called clerical staff.

## **1.3 Classification of public administration in reference to its function**

The functions of public administration are often considered as tasks or purposes. We can distinguish basic functions from those that the state sets as its general policy, and from those operational functions defined and verified through the current activity of the state administration.

**Regulatory administration** (*administracja władcza*), also called classical administration is most often realized by issuing administrative decisions and other administrative acts.

**Servicing administration** (*administracja świadcząca*), which is non-regulatory, is an activity conducted without the direct use of authority (empowered intervention). Examples of such activities include running a registry, public rallies, informative and organizational activities, social help and aid in natural disasters.

**Management or the administration conducting owners' and managing their rights**<sup>12</sup> (*administracja właścicielska*) of public administration. This type of administration is connected primarily with changes in the political system in the 1990s and the phasing out of socialist state rules (e.g., integrated fund of State properties) and phasing in of democratic state and free market rules. Administration conducts the owners' rights of the State Treasury, which comprises mostly public property under different forms (partnerships, agencies and other bodies).

Taking into account the material division of public tasks, with respect to the subjects of administration, one can also distinguish among numerous departments of public administration, such types as construction administration, transportation, educational, health care and social issues.

From an objective point of view, with respect to the bodies of administration, one can distinguish between state and local self-governing administrations.

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<sup>12</sup> This function is not new. In ancient juristic doctrine, one distinguishes *acta iurii imperia* and *acta iurii gestionis*. Moreover, in Communist Poland (1945–1989), no strict legal distinction existed between public domain and public property, and management was executed as a form of central management of the national economy, see also webpage of Professor J. Supernat, *Basic Terminology in the Field of Public Administration*, <http://www.supernat.pl/wyklady/index>.