Z E S Z Y T Y N A U K O W E UNIWERSYTETU RZESZOWSKIEGO

SERIA PRAWNICZA

ZESZYT 108/2019 PRAWO 27

DOI: 10.15584/znurprawo.2019.27.7

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STRENGTHS AND WEAKNESSES IN THE OPERATION OF ADMINISTRATIVE LAW

Introduction

Administration equipped with adequate instruments should define directions for effective and efficient operation in a given human population. Its construct comprises organisational structures, statutory operations, tasks, competencies and people. Good administration relies on robust knowledge and the ability to make the right decisions. Generally, the theory of organisation and management (TOM) emphasises the importance of team work, and specific operations are possible only if that results from decisions made by the team, and reflects interests of the whole. Seemingly it should be the same when it comes to performance of executive tasks by central agencies, national and local governments. Law is not built by one person but by a group of people, or experts, so it is necessary to focus on dependable cooperation and common interest, for the good of the country and its citizens[1].

Administrator must have their own vision of the administration process, and follow the vision in their work, operations, decisions, and orders, they should effectively manage and organise the life of the community, and most importantly, regularly organise trainings. Hard work and efforts of administrative bodies must be accompanied by honesty and reliability. Efficient management and administration of people most of all requires an organised top-down structure of authority. Governance of a state is divided into legislative, executive and judiciary powers[2]. The theory of administration comprises four major groups of prob-

[1] Cf. S. Wrzosek, *Wpływ teorii organizacji i zarzadzania na rozwój nauki administracji* [in:] *Gaudium in litteris. Księga Jubileuszowa ku czci księdza Arcybiskupa Profesora Stanisława Wielgusa*, eds. S. Janeczek, W. Bajor, M. Maciołek, Lublin 2009, p. 603–609.

[2] Cf. J. Starościak, *Zarys nauki administracji*, Warszawa 1971, p. 262–273.

lems: 1) issues related to organisation of the administrative apparatus; 2) issues related to the personnel performing operations of the so-called public authority; 3) issues of the broadly defined methods of administrative work; 4) technical issues related to the functioning of state administration and other public organisations. Characteristics of state administration include its unity and congruity. No administrative body defines its basic purpose independently and separately.

It is possible to distinguish a few characteristics of administration. These include: 1) **the purpose** – in this case administration of people's affairs subject to public management; 2) **means of operation** of the state administration, at the central and territorial level – this comprises a political and social objective in accordance with a conviction that each community must have authorities and administrative order; 3) **specificity of state administration**, i.e. its orientation towards the adopted strategy of operation and handling of citizens' affairs. The entire public administration of a country is characterised by hierarchical structure, which means there is an orientation from higher ranks downward, and the lower ranks of authority are subordinate to the higher or central instances. One could talk here about decentralisation of power and delegation of authority to lower ranks. This is in accordance with the principle of subsidiarity which says that if something can be done at a lower level, it does not have to be executed by those in higher ranks. Administrative power in a country is executed by organs of authority comprising one person or a group of people, in the case of collective bodies. The organs are comprised in the organisational structure of the state or the local government, and operate in the territory stipulated by the law defining the the competencies. Notably, all the administrative structures consist of two categories of entities, i.e. organs and officers[3]. We can distinguish organs of state administration, national and territorial governments as well as professional self-government. There may be decision-making and advisory bodies, as well as first and second instance organs[4]. Public tasks performed by the state include those intended to ensure security for the citizens, safety and integrity of national borders, assistance to Poles living abroad, aid for citizens during their visits abroad, aid to veterans of independence struggles, and policies related to employment, supervision of working conditions, provision of specialised healthcare to children, pregnant women, disabled people and senior citizens, combatting of epidemics and many more. This suggests a broad horizon of impact made by public administration. The weakness does not lie in the administration itself or administrative law, but in those who institute the law and, most importantly, those who apply it in real life to solve problems of the society and individuals[5]. This statement suggests that the entity instituting the law, and the entity applying legal

[3] A. Błaś, J. Boć, J. Jeżewski, *Administracja publiczna*, ed. J. Boć, Wrocław 2004, p. 156–157.
[4] *Ibidem*, p. 158–165.
[5] *Ibidem*, p. 141–142.

regulations may be strong or weak and this directly affects the quality of law. It is wise people who determine happiness of others. Talented and wise people should be given a voice and allowed to design laws; they should not by excluded from such tasks of key importance. Adam Habuda claims that codified law most importantly includes the generally applicable acts and regulations issued thereunder, as well as regulations of local law, and even instructions or internal regulations issued under various names. There are many opinions related to laws, glossaries are published, theoreticians provide legal interpretations of regulations, by reference to verdicts passed by Regional Administrative Courts (WSA), Supreme Administrative Court (NSA) and the Supreme Court (SN); all these endeavours give shape to the contemporary law, in its various disciplines. The task defined for interpreters of law is to interpret a legal norm for its applicability in a given case. The collection of legal regulations comes with the public administration, with its practice and style of operation. All of the above factors create the law in its ultimate manifestations. Law is inevitably imposed onto the organs of the state at the different levels, since it is also an instrument of exercising the power, and the authoritative functioning of administration and its law. Legal regulations also impose restrictions on the entities applying it in practice; law itself is also limited as it does not anticipate everything, particularly unforeseen yet plausible cases[6]. The weakness does not lie in expertise or professional abilities of individuals because there may be errors, but the thing is about the characteristics of the organisation, its structure, to what extent it abides by the law, and generally whether the management method is taken into account. This seems to be most important. Negative features of law include excessive formalisation, excessive legalisation, excessive instruction, and most of all multiplication of regulations which appear, again and again[7].

As for the concept of administration, the term comes from the Latin word *administratio* – meaning management and direction, defining a way of operation. Administration may be discussed in subjective and objective terms. Public administration is a prerogative of a state, implemented by its subordinate organs as well as by bodies of territorial government, and it is intended to satisfy collective and individual needs of citizens, resulting from their co-existence in a society[8].

One could ask about the premises, i.e. conditions and objectives, which accompany development of the state's organisational status. These premises include:

1) the state's material potential (resources in the state treasury),
2) organisational standing of the state (state administration),
3) contents of socioeconomic policy (political strategy).

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[6] A. Habuda, *Prawo jako instrument ograniczenia patologii w demokratycznym państwie prawnym* [in:] *Patologie w administracji publicznej*, eds. P.J. Suwaj, D.J. Kijowski, Warszawa 2009, p. 59.

[7] *Ibidem*, p. 61.

[8] *Prawo administracyjne*, ed. J. Boć, Wrocław 2000, p. 16.

Ad. a) The state's material potential – this is a rationale for administrative interference, hence according to a dynamic approach, it is not defined directly by the nation's affluence. This depends on the design of the economic system. The interference of the administration, as a law-making and executive activity, raises the need to determine the significance of the above premises. The strength of the material potential of the state and local governments and its effect in the range and contents of the interference, should be considered with respect to the fair division of administrative operations into those which involve shaping and transfer of services and material goods, and those without similar connotations;

Ad. b) Organisational standing of the state is a collective group of suppositions reflecting important elements connected with the organisational structure of administration, seen in particular in the context of its effectiveness and efficiency[9].

Ad. c) The basic issue is related to the object of the policy. Policy to an extent means a system, approved by bodies of the national and local government, comprising extra-legal statements and postulates with regard to where, when and how the potential of the state and the territorial governments is to be used. Here we can distinguish two approaches: **firstly** *politics towards administration* – it may affect the objective range of its interference wherever, as a result of respecting it, administrative organs institute law; **secondly** – *politics in administration* – this is either politics towards administration, processed horizontally or vertically, in compliance with the system of organizational subordination, or policy created in administration itself, hence constituting no direct elaboration of the contents of external policy[10]. The above seems to suggests that the quality of law and its applicability depend mainly on the efficiency of the state in which given law is in force, and is respected or not.

The objectives of administrative policy obviously include: "legitimate interest of citizens", "social welfare", "common good", "general national interest", "interest of the state", "social interest", and "public usefulness"[11].

Characteristics of administrative law in public administration

Administrative law is a collection of norms regulating administrative operations (this is related to administration in the objective sense), or administrative law is that which sets forth norms for public administration. Another definition

[9] *Ibidem*, p.19.

[10] *Ibidem*, p. 20.

[11] *Ibidem*, p. 21; see: A. Błaś, J. Boć, J. Jeżewski, *Administracja publiczna*, p. 32–39.

of administrative law accounts for its specific characteristics, i.e. "power of authority" reflecting the capacity to unilaterally resolve individual situations, to make permanent and applicable resolutions binding for all legal entities in the organism of the state, and enforced by the state, in a situation when such resolution is linked with a necessity to impose an obligation. Administrative law is the type of law which comprises the element of "the power of authority", realised by competent bodies of central and local authority. According to F. Longchamps: administrative law relates to public administration understood as a certain area of social culture, and is specific to it, in other words it comprises that which is created specifically for the organisation and operation of public administration rather than for other areas of social culture[12]. It should be emphasised that in a state ruled by law, public administration is understood as a systemic function of the state and of territorial government, and it involves performance of public tasks described by law[13]. Public administration embedded in a state must follow the basic principles:

1) *The principle that generally applicable law is binding* in all operations of any statutory institutions. It is the legal and moral standards that limit the excessive freedoms of administrative bodies.
2) *The principle of executive nature* of all the operations performed by public administration agencies. It is rooted in the constitutional separation of power (into legislative, executive and judiciary bodies of public authority)[14].
3) *The principle of subjecting all the operations* of public administration to supervision by independent Courts of Law. Today it can be observed that public administration employs all possible system-related, legal, political and economic means to distribute the powers and expand its place in the three-fold functions of governance.
4) *The principle of legal accountability*, it is necessary for normal and dependable functioning of state institutions. This is related to the sense of responsibility when decisions are taken by public administration bodies[15]. Here are some other principles: Tasks performed by public administration are set forth by legal acts. Existence of organisational structures is justified if these contribute to effective and efficient performance of duties and tasks designated for the public governance. It is not public administration that creates the generally binding laws; it can only review legal texts of normative acts. Administration does not constitute an internal structure, exempt from any public control, or from supervision by the judiciary. Public tasks are performed in order to protect citizens' interests, particularly as regards homeland security and social

[12] *Prawo administracyjne*, ed. J. Boć, Wrocław 2000, p. 35–36.
[13] A. Błaś, J. Boć, J. Jeżewski, *Administracja publiczna*, p. 32.
[14] *Ibidem*, p. 33.
[15] *Ibidem*, p. 34–37.

welfare. Tasks executed by public administration bodies are always treated as mandatory, which means they cannot be dispensed with. Public administration bodies execute public tasks related to legal provisions, and they clearly regulate the process of performing the tasks and obligations[16].

Critical opinions can be heard claiming that administrative law is in crisis. It is similar to any crises which are announced. The institution of family or marriage may be in crisis. There may be an economic or political crisis in a given country. If we want to discuss a crisis, or rather symptoms of crisis, and inefficiency of administrative law, it is necessary to point out that the foundations of this type of law are weak due to the lack of a code of administrative material[17] or systemic[18] law. Most importantly lack of efficiency must be acknowledged in people, as an entity instituting the law and its structure.

On the other hand, a lot of good manuals or books related to this area of administration studies or to administrative law are published, emphasising its power of authority in public administration. Indeed, one could talk about certain weaknesses of this legal order, which nevertheless continues to function, for better or worse. There may be excessive expectations. One should mention the entities instituting administrative law, and the entities applying this legal mechanism practically at all the levels of public governance. Deliberations focusing on the weakness of administrative law should take into account the conflict of interest in its relation with the broadly understood order of civil law with its increasing internal aggressiveness and unjustified conceit, together with the provisions of the Code of Civil Law[19] and Code of Civil Procedure[20]. Many civil law specialists, representing various opinions and approaches as practitioners in private law – present an attitude of disregard for the existence of and the public nature of administrative law, which to a degree follows its own rules[21]. These considerations show that administrative law is an order instituted by the legislator, in order to secure public interests by way of administrative decisions operating from the superior ranks of power down to the lower levels of governance, and finally with respect to specific individuals, citizens of a given country. Where administrative law is applied, there may occur procedural defects or erroneous

[16] *Ibidem*, p. 38–39.

[17] Cf. Z. Leoński, *Materialne prawo administracyjne*, Warszawa 2009, p. 1–246.

[18] *Prawo administracyjne*, ed. M. Wierzbowski, Warszawa 2009, p. 17–331.

[19] Code of Civil Law, dated 23 April 1964 as amended.

[20] Code of Civil Procedure, dated 17 November 1964 (Dz.U. No. 43, Item 296 as amended).

[21] Cf. W. Łączkowski, *Kierunki rozwoju źródeł prawa w czasach współczesnych* [in:] *Starożytne kodyfikacje prawa*, ed. A. Dębiński, Lublin 2000, p. 117–129; see: *idem*, *Czy państwo i prawo mogą być aksjologicznie neutralne?*, „Prawo – Administracja – Kościół" 2000, no. 1, p. 57–66. This opinion is based on activities of professors specialising in civil law, and e.g. reviewing doctoral or habilitation dissertations in administrative law. On those occasions one can notice the dislike or excessively negative criticisms.

decisions, and justice in a peculiar way is lost in administration. The decision is issued, and that is a citizen's concern, but there is a question what happened to justice[22]. An authority executing law in a democratic country ruled by law is always limited, even if it is legitimised by the citizens, particularly during elections or by support for the people in power. A nation is sovereign if there is political democracy[23], because one can always ask who actually rules the country.

Administrative law is unilateral, it is authoritative by its nature and, simply speaking operates in situations when various administrative deeds are issued; these include decisions, permits, concessions, licences, etc. The lower rank of administration or an ordinary citizen is seemingly limited by top-down oriented decisions; it may also happen that a client is unfairly treated by a decision-making body equipped with specific competences and appointed with statutory tasks[24].

The eternal conflict between private civil law and public administration

It is evidently possible to see differences between the concept of civil law and the direction in which administrative law operates. In civil law its interpreters emphasise a specific type of effect arising from this law, resulting from nearly any activity of an entity subject to that law, and reflected in a relation of a legal entity to another legal entity. This is manifested in regulations on commercial companies[25]. It is obvious that every citizen of a country is subject to the relevant civil law, even if they do not know legal regulations. The sources of law include Directives of the European Union, International Law Conventions, the Constitution of the Republic of Poland from 1997, Code of Civil Law, Code of Civil Procedure, Code of Administrative Procedure, Labour Code, judicial decisions, the doctrine, Polish laws in legal acts and ordinances, as well as local law which should be taken into account in systemic interpretations of law. Here it is

[22] See: J. Oniszczuk, *Filozofia i teoria prawa*, Warszawa 2008, p. 359–375.

[23] H. Izdebski, M. Kulesza, *Administracja publiczna – zagadnienia ogólne*, Warszawa 1998, p. 19–20.

[24] See: W. Łączkowski, *Wartości chrześcijańskie a budowa systemu prawnego*, „Chrześcijanin w Świecie" 1993, Year XXIII, no. 3(194), p. 44–51.

[25] A limited liability company, pursuant to Art. 151 et. seq. of the Code of Commerce, is a commercial capital company, established for any legitimate purpose, and representing certain qualities of a civil partnership, founded by individually defined shareholders, and such participation is connected with marketable shares corresponding to a fraction part of the initial capital of the company. These shares cannot be incorporated in documents subject to trade; Code of Commercial dated 27 June 1934 (Dz.U. 1934, No. 57, Item 502 and Act of 15 September 2000 on Commercial Companies Code (Dz.U. 2000, No. 94, Item 1037 as amended; see: *Prawo handlowe spółki handlowe, umowy gospodarcze*, eds. A. Koch, J. Napierała, Kraków 2002, p. 279–280.

necessary to reflect upon the attitude of specialists in civil law to those focusing on public administration and administrative law; indeed they do not always present an attitude of understanding, however one must remember that administrative law has developed over the years, has its history, and has contributed to the functioning and management of the state institutions and agencies, country's administration at the national, regional and local level, i.e. in voivodships, poviats, municipalities, residential areas, and housing estates. Administration, in a simplified sense, stands for decision-making, it is a unilateral relation between the authorities and the citizen – the client, in the exercise of public authority at the levels of the administrative structure. Indeed, a specialist in administrative law must be familiar with both the Code of Civil Law, and Code of Civil Procedure, to know the domain in which they work, and in what way they are subject to the norms of law instituted in all of its areas. The point is there should be a greater gentlemanly understanding between these two types of legal constructs which should not compete; rather than that they should supplement each other and establish agreeable coexistence for their applicability and enforcement in practice, with respect to their distinctive competences and specificity. Each branch of law has its specific features, its purpose, object, methods, applicable norms, sources, doctrine, and most importantly human capital, i.e. professionals. It is necessary to stick to this stipulation and to the respective competences, and in the interpretation recognise the norms of the Civil Code in an area in which one is located and operates, being subject to legal regulations.

Here one can refer to J. Łętowski who said: "In the sphere of individual relations one can say that a substitution of administrative relation with a relation under private law results in ineffectiveness of administrative control (including by court of law) which is replaced by judiciary control under private law, based on other principles and implementing entirely different purpose. This is because whatever is done by administration, must comply with the public interest, while a private entrepreneur pursues their own profits, and that motivates their efforts"[26].

Strong features and functions of law

We will point out the strengths and functions of law; these in fact are quite important, provided that they see the light of day and that everyone realises what law means in public administration of a democratic state. We are constantly opting for governance of a sovereign and democratic state, where the authorities tightly abide by the law, do it in accordance with social ethics and everyone lives in affluence. Meanwhile, one might ask whether any state in the world meets these criteria?

[26] J. Łętowski, *Prawo administracyjne dla każdego*, Warszawa 1995, p. 16 et seq.

Evaluation of modern administrative law

There is a code of administrative procedure, but we do not have a code of material administrative law, or a code of systemic administrative law, and this is a serious difficulty and a cause of the weakness of this legal system. Certainly, administrative law is needed at the various levels of public administration, in the execution of power by the central authority, as well as the national and local governments[27]. In the current considerations it is necessary to emphasise the importance of the system of administrative law, in its characteristics showing weaknesses and strengths of this area of law; it is necessary to point out the large body of literature focusing on material and systemic administrative law as it is constantly published, following scientific and legal updates. No matter what we invoke to weaken the system of administrative law, we must pay attention to the wide package of administrative provisions in laws and ordinances which have rendered and will continue to do a great service in the exercise of power by institutions of national and local governments. I want to emphasize that, despite the weaknesses, such as the lack of uniformity of provisions in administrative law, as there are certain segments in this system (material, systemic, procedural, and related to enforcement and administrative courts), the diversity and the multitude of aspects covered by the law is not conducive to its development, and most importantly to public awareness related to it.

Features of law

Everything in the universe is governed by laws. Today one cannot imagine communities, and people living there, who are not subject to legal norms. From the smallest particles of matter on the earth, to the largest celestial bodies, galaxies and their systems in the outer space, everything is governed by the laws of nature. A man in a community is subject to human-made law, or positive law. Laws do not only apply in the natural world - physical, biological, chemical, and other laws, but also between individuals in the human community. It would be difficult to imagine a political community or a state without moral and legal norms that guard public order and peace. Norms of human-made law to an extent protect individual people. It is easy to envisage the chaos which would dominate in a place where people would refuse to comply with the moral norms and legal regulations in force and where there would be no entities guarding the public law and order[28]. Administrative law is rather strongly rooted and constituted in the history of administrative ideas from times immemorial up to the present times[29].

[27] See: W. Wytrążek, *Samorząd terytorialny w XX wieku w Polsce*, Lublin 2009, p. 149–167.

[28] Cf. Z. Łyko, *Socjopatologie w aspektach chrześcijańskiej etyki*, Warszawa 1987, p. 65.

[29] See: T. Maciejewski, *Historia polskiej myśli administracyjnej do 1918 roku*, Warszawa 2008, p. 1–107.

One might try to answer the question: what is the essence of law? The response would be that the essence of law is its regulatory power. Law instituted by the legislator regulates various areas of life for members of the society, introducing common values, and defined order complying with the law. Another characteristic of human-made law is its **enforceability**. If it is to fulfill its *regulatory functions*, law must be in force, and its application may be enforced by the authorities. The point is that state authorities must be able to enforce punishment for a crime, and consequently to safeguard "the common good". According to R. Sarkowicz and J. Stelmach: "Legal order may be understood as a system of institutions, bodies, and procedures stipulated by applicable legal norms for resolving specific issues, as well as behaviours of legal entities, defined by these norms and considered in relation to behaviours of other entities and institutions"[30]. Universal values protected by law are often treated instrumentally by authorities and political groups, which often have a decisive influence on the legislative process and legislation[31].

Quite a significant feature of law is its **interpersonal nature**. In order to be effective, legal norms adopted in a given country should take into account relations between entities and between individuals. Wherever people live within communities, they are subject to legal transactions, or they are addressees of administrative or enforcement decisions, hence it must be emphasised that law should be known to the public and it should be applied to reinstate the public order. The last feature of law which we want to mention is its **fairness**. Each and every legal and moral regulation not only aims to define specific order, but first and foremost is designed to implement the beautiful principle of fairness, i.e. justice, which is expressed in accordance with the Old Roman formula – the principle of giving everyone what is due to them. Notably, although it is not everywhere in the world that these noble ideas are realized, they nevertheless belong to the essence of the legal system in an absolute, irrevocable and existential meaning[32].

Functions of law

Proper design of public life defined for the society of a given country assumes appropriate relations between a specific citizen and the state. Such relations are regulated by the legal norms in the organism and within the territory of the state, delineated by its borders. Legal acts have always been created for the sake of people, their freedom and growth; they have always been constituted as the law designed to regulate human relations in the community. This is expressed by the sentence: *hominum causa omne ius constitutum est*[33].

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[30] R. Sarkowicz, J. Stelmach, *Teoria prawa*, Kraków 2001, p. 109.

[31] A. Kojder, *Socjologia prawa* [in:] *Socjologia w Polsce*, eds. Z. Krawczyk, K.Z. Sowa, Rzeszów 1998, p. 411.

[32] Z. Łyko, *Socjopatologie*…, p. 65–66.

[33] R. Sobański, *Człowiek i środowisko w polityce dla rozwoju*, „Prawo Kanoniczne" 1995, vol. 38, no. 3–4, p. 12.

In accordance with philosophy of law it is possible to distinguish a number of functions of law:

1. *Repressive,* involving punishment of criminals for offences committed.
2. *Promotional,* involving appreciation of a variety of important issues from the point of view of man as a relational subject with respect to legal requirements, as a citizen in relation to the state and administrative authority[34].
3. *Educational,* involving instruction of citizens pointing to the fact that if something is guarded by legal norms, it must be respected and protected. A citizen and the authority should equally respect legal regulations and follow the law which has been instituted and implemented. Anyone can understand that if something is mandatory, one must follow the obligation and if something is forbidden, one must not do it[35].

It is possible to distinguish other functions of law, such as:

1. *Integrating* – law is an instrument of authoritative action by the legislator towards the citizens, aimed at preserving social order.
2. *Stabilising* – law provides legal grounds for stabilisation of the political and social situation in a given country.
3. *Innovative* – means that law may be used, as a fundamental instrument of community pressure in a process of introducing social transformations in a country. New legal acts generally should make life easier for citizens, and give them a sense of social security. They are also intended to cause change in important and urgent situations. Introduction of new institutions is to improve functioning and organisation of a growing and secure civic society[36].
4. *Protective* – means that law should safeguard elementary ethical and moral values and define responsibilities, rights and privileges[37].
5. *Organisational* – law establishes certain rules of superiority, authority and subjection in various types of formal structures, as well as relationships between specific levels of governance and those subject to the legal order.
6. *Reformatory* – this function should be highlighted, since it involves sanctions and penalties used by the legislative body to foster conformity with regard to rules and normative regulations. Sanctions may act as a warning, a reprimand or a reformatory measure; most of all they are to punish offenders violating social order. Law penalises and should penalise offences and various types of crimes[38].

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[34] S. Kasprzak, *Normatywny wymiar ekologicznych i sozologicznych idei w systemie prawa państwowego i kościelnego*, Lublin 2003, p. 591

[35] *Ibidem*, p. 591.

[36] *Ibidem*, p. 583.

[37] A. Kojder, *Socjologia pra*wa, p. 409.

[38] *Ibidem*, p. 398–409.

7. *Compensatory* – law is to provide remedy for damages, or to compensate for public or individual losses caused by criminals, by bringing them to justice. A victim may seek to regain any violated rights and may claim remedy for any damages[39].

Weaknesses and defects of administrative law

Efforts to characterise administrative law should take into account basic drawbacks of Polish law. We can say quite openly that it is inflationary law, because in a way it is similar to a production line programmed to achieve "quantity" rather than "quality". This comment is not only related to administrative law but to the entire system of Polish law. One might be tempted to assess the law of the *European Union*, but nobody has the courage to criticize this or that directive which has a priority over the law of a given country. In the literature we can encounter many comments addressing contemporary man-made law. Weaknesses of law include: multiplication of regulations; excessive formalisation; excessive legalism, excessive prescribed instructions; blank rules which may regulate anything; irrationally construed legal institutions present in regulations which are ineffective; laws violating the Constitution of Poland are passed; law which is designed as an instrument to silence mass media and limits their freedom; finally, a negative feature of law is particularism in the application and legal interpretation[40].

Law making by its nature is a long-lasting process and should proceed slowly, as it is impossible to create effective legal norms in a short time only because a given sphere is not sufficiently regulated. The *legislative process* in our Polish parliament is extremely fast-paced as a result of which the laws are imperfect. If the time allocated to creating legal regulations is too short, too many ill-considered provisions are passed, and to be honest, ordinary citizens have no idea about law-making, and it is impossible to reliably draw up even a general index of legal provisions that are announced and enforced by specific regulations. There is a risk that the national legislator, as well as Polish citizens and any newcomers (immigrants) will no longer take them seriously. Although the phenomenon of inflation is related to money, this economic factor may in a way be, by reference, used with respect to the domain of legislation, where the excessive number of legal acts which are long, elaborate and descriptive rather than concise and effective, does not translate into *quality of legislation*. Law is not intended to describe social and political life of the country, but to define norms and sanctions for it. In the acts one may encounter too much of the so-called

[39] S. Kasprzak, *Normatywny wymiar*…, p. 583–584.

[40] A. Habuda, *Prawo jako instrument*…, p. 58–71.

vulgarity, illegibility, ambiguity, lack of sanction, and no brevity like in acts of the Roman law. A Roman jurist would create and underwrite an act, today a group of people does the former but no one signs the bill; only there can be scuffles as to the confirmation or rejection or possible amendment of the law[41].

A serious drawback of Polish law in its various branches is its complexity, ambiguity and the fact that it is incomprehensible to ordinary citizens; this e.g. applies to tax laws. Laws are often contradictory and, above all, difficult to understand by the addressees. After new regulations are published, contradictory interpretations are formulated. Bolder opinions are considered to be correct. Another defect harmful for the society is the fact that applicable law is not always consistent with the human rights and universal human values, e.g. when families are deprived of housing by the so-called eviction[42]. A unique defect of Polish law is the fact it may be described as "playful", which means that existing provisions of legal norms are not applied by bodies of public authority; indeed, they are not even taken into account by the national law makers in their further legislative work, and are not enforced in the country's public life[43]. One example is Art. 2 of the Constitution, providing that Poland "shall be a democratic state ruled by law and implementing the principles of social justice"[44]. Law, and particularly the Constitution of the Republic of Poland, should not be declarative only; it should be stable and real, it should be approached with respect and interpreted with all solemnity[45]. There should be no place for pathologies, such as corruption, exemplified by officials seeking personal gains while performing public duties[46].

It is often found that law, in a camouflaged manner, is not ethical, it is also "imitative" – imported from abroad, especially from the United States[47] and the European Union. From this comes a lesson that great attention should be paid to man-made law, and to the development of its regulations; this is to be done by *government experts*, reliably and to the point rather than at request.

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[41] Cf. B. Kunicka-Michalska, *Podstawowe wady naszego prawa* [in:] *Jakość prawa*, ed. A. Wasilkowski, Lublin 1996, p. 161.

[42] *Ibidem*, p. 162–163.

[43] S. Kasprzak, *Normatywny wymiar*…, p. 592.

[44] Constitution of the Republic of Poland, Art. 2 (Dz.U. 1997, No. 78, Item 483).

[45] See: B. Kunicka-Michalska, *Podstawowe wady*…, p. 163.

[46] See: T. Barankiewicz, *Służba publiczna – patologie* [in:] *Encyklopedia prawa administracyjnego*, eds. M. Domagała, A. Haładyj, S. Wrzosek, Warszawa 2010, p. 286; *idem*, *Etyka urzędnicza – źródła* [in:] *Encyklopedia prawa administracyjnego*, eds. M. Domagała, A. Haładyj, S. Wrzosek, Warszawa 2010, p. 284–285; *idem*, *Urzędnika etyczne obowiązki* [in:] *Encyklopedia prawa administracyjnego*, eds. M. Domagała, A. Haładyj, S. Wrzosek, Warszawa 2010, p. 286–287; *idem*, *Urzędnika odpowiedzialność dyscyplinarna i społeczna* [in:] *Encyklopedia prawa administracyjnego*, eds. M. Domagała, A. Haładyj, S. Wrzosek, Warszawa 2010, p. 288–289.

[47] B. Kunicka-Michalska, *Podstawowe wady*…, p. 164–165.

Subjective public rights

The concept of subjective public rights today is perceived as one of the most controversial matters in the study of administrative law, and it should be emphasised that the discussion focuses on the essence of the concept and its usefulness as a research tool. The concept of subjective public rights was created to describe the relations between the specific citizens and bodies of public administration operating with a power of authority, and the term is rooted in an assumption that law is binding not only for an individual within a country, but also for the state itself; what is more an individual may apply certain rights against the authoritative administration, as a result of which they gain a degree of freedom from administrative interference[48].

According to Marcin Janik: „Autonomy of administration, as a process opposed to bureaucratic pathology, leads to a change in the structures and methods of operation, which brings some public administration closer to solutions that have long been used in the private sector. (…) Institutions of public sector have less autonomy and flexibility than private institutions"[49].

According to Barbara Jaworska-Dębska "administrative bodies at both central and local levels define executive acts, while rules of order as well as systemic organisational regulations are also adopted at the local level (…). The specificity of its law-making operations is reflected by the fact that administration executes the regulations which it has enacted"[50]. They can be created as needed, at a request or as required by this or that legal provision. Bodies of executive authority are entitled to institute acts of lower rank, or lower-order acts which are issued mainly based on statutory rights[51]. One can say, referring to Józef Strzelecki, that the problem of specific pathological behaviours in administration, aiming for material gains, is a phenomenon resulting from personal characteristics of the officials who perform their functions, as well as from imperfections of legal regulations[52].

Specificity of administrative law

The specific quality of the law applied in administration is its power of authority. No specialist in administrative law has a problem with it, however lawyers representing other branches of law have some ungrounded doubts regarding the structure of administrative law.

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[48] *Prawo administracyjne*, ed. M. Wierzbowski, Warszawa 2009, p. 182–183.

[49] M. Janik, *Patologie w administracji publicznej (wybrane zagadnienia)* [in:] *Patologie w administracji publicznej*, ed. P.J. Suwaj, D.R. Kijowski, Warszawa 2009, p. 72–79.

[50] B. Jaworska-Dębska, *Kilka uwag o patologii w działalności prawotwórczej administracji publicznej* [in:] *Patologie w administracji publicznej*, ed. P.J. Suwaj, D.R. Kijowski, Warszawa 2009, p. 80–97.

[51] *Ibidem*, p. 81.

[52] J. Strzelecki, *Niedoskonałość rozwiązań prawnych a sytuacje patologiczne w administracji publicznej* [in:] *Patologie w administracji publicznej*, ed. P.J. Suwaj, D.R. Kijowski, Warszawa 2009, p. 170–178.

While characterising material administrative law, even briefly, one must emphasise that its special and unique feature – and a difference compared to judiciary law – is the *fact* that its substantive (material) scope is not strictly defined due to the lack of codification of this legal system, however its sufficient provisions exist in many areas of life. A matter of fundamental importance is a need to ensure cohesion of the broad range of legal regulations[53].

This chaos, or the lack of precision in instituting laws, certainly results from the facts that there are a number of entities involved in designing material law, e.g. at a ministerial or local level, and material law is created at various periods of time[54]. It seems that, in accordance with this characteristic, the strengths and weaknesses of (systemic and material) administrative law are also, or mainly, rooted in the political transformation of the country, or transition from socialism to capitalism. In fact, the process has not been completed yet. This phenomenon largely contributes to frequent changes in material administrative law, and that in turn leads to disorientation because new provisions must be studied, examined and interpreted. It also must be pointed out that the greatest weakness is linked with defective *legislative techniques* used in drafting, instituting and then implementing the law.

In the system of material law, the issues of material administrative-legal relation come first. The point is that it is necessary to distinguish such regulations which define specific obligations, tasks and administrative-legal rights in connection to specific actual states or legal cases. The forms of securing social, collective or individual good, and protection of freedoms and property are closely related to this thematic area. It is also necessary to take into account such assets as: well-being, environment conservation, as well as internal and external safety of citizens. Problems which are also worth considering include the Code of administrative procedure, tax ordinance, and procedural law which secure implementation of material law, via administrative decisions and administrative enforcement actions[55].

Where is the strength

If an act contains a specific provision, it is binding for a citizen, and whether or not one likes that, it should be applied by bodies of authority and respected by citizens. If there is a specific act, it should be applied without doubt in the public life and by the state administration, in compliance with the relevant ordinance. Law may be criticised, but it must be respected nonetheless. Compliance with the law, and its criticism are two separate matters.

[53] Z. Leoński, *Materialne prawo*…, p. 8.
[54] *Ibidem*, p. 8–9.
[55] *Ibidem*, p. 8–9.

An obligation to respect provisions of law, whether civil, criminal, administrative, EU Directives, International Law Conventions, or local law, means that entities of central or local governance, at various levels and in various offices must comply with the law and apply it in everyday service to society, regardless of the substantive content of the legal provisions[56]. To follow written laws: this is also a solution to a crisis situation.

Where is the weakness

Weakness of administrative law and administration can be seen in various symptoms of pathologies in the performance of administrative tasks by competent bodies of public authority.

We must be aware that administrative law comprises legal regulations set forth in acts and ordinances, but it is also represented by the entire structure of the administration and, above all, by people performing their tasks and duties, and applying legal provisions to specific events of life. The problem lies in the fact that not all people perform their duties well, they may be sluggish, or fail to update their knowledge of law, and perform their professional duties poorly, by simply neglecting them. This element of human capital largely determines the effectiveness of the administrative law system, in the functioning of central and local administration. This means that the human factor is the foundation determining the effectiveness of administrative decisions. We should acknowledge that the entire system of administrative law does not have its own code, which results in a rather lenient approach to the effectiveness of broadly defined administrative law. Weaknesses of law also include incorrect legal texts in acts, but this is linked with errors in the legislative process which has its own course, however here everything depends on human imperfections. This should be improved. It is the human being, the law-maker, that fails to notice everything while drawing up laws; other people see something different, some others equipped with greater experience see a specific regulation in a different way. This leads of a conflict or misunderstanding, because everyone has their own interests which they want to take into account at all costs in the legal regulation. It seems that a very important weakness in the exercise of administrative law and generally in the application of legal norms lies in the fact that the system of the state is subject to politics. The reality of the modern state makes it impossible to neutralise party-oriented politics, therefore I believe that any reform of administrative law can only be based on professionalism and intelligent administration.

[56] See: J. Wegner, *Cienie legalizmu* [in:] *Patologie w administracji publicznej*, eds. P.J. Suwaj, D.R. Kijowski, Warszawa 2009, p. 179–193.

Ways to improve the quality of administrative law (defects of law)

By reference to Joanna Wegner[57] it is possible to point to certain signs of dysfunction in the state's public administration:

- actual violation of the rule of law, especially in drafted laws and application of law by public administration bodies,
- deliberate implementation of regulations violating the rule of law,
- instrumental approach to legal provisions, in order to achieve short-term goals at all costs; it can be seen in activities of this or that party,
- negative effect of the process in the operation of public institutions which bear the consequences of their own ineptitude, based on application of law incorrectly structured by law designers,
- law is applied with the conviction of infringing and violating universal values, such as truth, good, beauty, and morality,
- introducing individual and specific legal provisions into the system that remain in conflict with the rule of law[58].

Admittedly, law without doubt is an instrument of policy making, but law cannot be at the service of politics, because in such case we face a phenomenon which adversely affects the legal order itself. One has an impression that some legal acts are promulgated without any consideration to the fact whether or not they comply with the rule of law. Law-making requires a good idea from the legislator, as well as many discussions and efficient counselling. A legislative process must be accompanied with a kind of anticipation and sound calculation to determine whether or not a given legal act is necessary. Here are some important elements of good law: a good idea, necessary professional knowledge, government experts, advisers, life experience, reflection and public discussion. Everyone knows that legal defects are eliminated owing to the efficient work performed by the Constitutional Tribunal[59], is it really so?

If the authority issues an administrative decision based on legal provisions instituted with a violation of law, the authority itself also breaches the rule of law at the time of signing this legal act[60]. Legislative errors of the law-maker can be repaired, provided there is good will and consensual action. It would be important to monitor the legislative process of establishing administrative laws, to be applied as a specific internal whistleblowing device for detecting defects, whereby these would be corrected with a help of an expert committee. It would also be useful to assess effects of regulations in selected areas of life[61]. Notably,

[57] *Ibidem*.
[58] *Ibidem*, p. 188–189.
[59] *Ibidem*.
[60] *Ibidem*.
[61] *Ibidem*, p. 191.

events of life are not produced by a legal norm. It is just the opposite – indeed, it is life that drives development of new laws. It is necessary to make use of suggestions provided by legislators and experts who have their opinions; it is necessary to listen to them and improve legal provisions in regulatory acts. Finally, it is of fundamental importance that the process of constructing a legal system must be based on universal and ethical values[62].

Conclusion

Law, as an instrument of ensuring public order in a democratic state ruled by law, also reinforces social relations between citizens; it is promulgated so that a country may promote culture and become citizen-friendly state. The role of law may not be limited to the functions associated with protection of citizens' liberties and regulation of collision-free social relations. Legislation pertaining to the social and economic domain is to support citizens' involvement in economic operations and to stimulate economic growth of the country. The political writer Jan Ostroróg maintained that customs significantly impact the content of legal norms, the way they are established and enforced. Customs should be understood here as the entirety of social, political, economic, developmental, moral, religious, and cultural relations in a given national or state community[63]. It has been pointed out that: „Negative, pathological phenomena associated with the functioning of public administration to a degree are an integral part of the functioning of any organization, as well as any type of organized human activity"[64].

The above remarks show that a state should protect and safeguard its citizens. However, within its territory, it should interfere as little as possible in its citizens' private affairs, leaving them as much space as possible to use their liberties freely, in building the common welfare and prosperity, however abiding by ethical standards[65]. The system of law is eroding, which is particularly caused by the lack of respect for the values carried by democracy and the rule of law; this reflects a serious damage of law and generally its quality. One should know that administrative entities apply legal regulations with the knowledge they destroy or disregard these values, whenever they make a decision based on invalid legal provisions. Respect for the law is treated with in-

[62] *Ibidem*, p. 192; see: T. Barankiewicz, *Urzędnika etyczne obowiązki*, p. 286–287.

[63] A. Kojder, *Socjologia prawa*, p. 398.

[64] J. Izdebski, S. Wrzosek, *Rola nauki administracji w identyfikowaniu patologii w organizacji i funkcjonowaniu administracji publicznej* [in:] *Patologie w administracji publicznej*, eds. P.J. Suwaj, D.R. Kijowski, Warszawa 2009, p. 813 and 806–814.

[65] A. Kojder, *Socjologia prawa*, p. 408–409.

creasing carelessness. This is not a good approach if we want to improve the quality and effectiveness of law. Quality of and respect for law are strongly affected by the political orientation; members of this or that party want to apply legal regulations selectively, for their own advantage. The statutory control of legal aspects cannot eliminate its own defects identified[66]. It should be emphasized that "the quality of the administration's operation is not determined by possible inspections or by compliance with the law. Above all, it depends on the officers themselves, their awareness and responsibility for carrying out public tasks"[67]. Before they start their work, officers should know the catalogue of ethical rules[68] related to the performance of tasks and duties of an institution or the office.

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[66] J. Wegner, *Cienie legalizmu*, p. 191.

[67] A. Ziółkowska, *Patologie w administracji publicznej – przyczyny i próby przeciwdziałania* [in:] *Patologie w administracji publicznej*, eds. P.J. Suwaj, D.R. Kijowski, Warszawa 2009, p. 194–203.

[68] Integrity, reliability, efficiency, legality, rule of law, honesty, responsibility, subsidiarity, honesty, helpfulness to the client and more.

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Summary

The specific quality of the law applied in administration is its power of authority. No specialist in administrative law has a problem with it, however lawyers representing other branches of law have some ungrounded doubts regarding the structure of administrative law. It should be emphasized that the quality of the administration's operation is not determined by possible inspections or by compliance with the law. Above all, it depends on the officers themselves, their awareness and responsibility for carrying out public tasks. Before they start their work, officers should know the catalogue of ethical rules related to the performance of tasks and duties of an institution or the office. Law-making by its nature is a long-lasting process and should proceed slowly, as it is impossible to create effective legal norms in a short time only because a given sphere is not sufficiently regulated. The *legislative process* in our Polish parliament is extremely fast-paced as a result of which the law is imperfect. On the one hand, administrative law is weak because there is no code of material and systemic law, on the other hand, the strength of the legal system lies in its character, i.e. its power of authority.

Keywords: administration, administrative rights, power, legislative errors

MOC I SŁABOŚCI W DZIAŁANIU PRAWA ADMINISTRACYJNEGO

Streszczenie

Cechą specyficzną prawa, które służy funkcjonowaniu administracji, jest władztwo. Żaden administratywista nie ma z tym problemu, za to z kolei inni prawnicy, którzy są reprezentantami innych gałęzi prawa, mają jakieś nieuzasadnione wątpliwości co do konstrukcji prawa administracyjnego. Należy podkreślić, że o jakości działania administracji nie decyduje możliwość przeprowadzenia kontroli czy przestrzeganie prawa. Nade wszystko zależy to od samych urzędników, ich świadomości i odpowiedzialności za realizację zadań publicznych. Urzędnik, zanim przystąpi do pracy, powinien znać katalog zasad etycznych wykonywania zadań i obowiązków organu lub urzędnika. Stanowienie prawa jest z natury długofalowym procesem i powinno dokonywać się powoli. Nie można w krótkim czasie tworzyć norm prawnych jedynie dlatego, że dana dziedzina nie jest dostatecznie uregulowana. W naszym polskim parlamencie *proces legislacyjny* tworzenia prawa jest tak błyskawiczny, a to powoduje, że prawo jest niedoskonałe. Z jednej strony prawo administracyjne jest w swym systemie słabe, gdyż nie ma kodeksu prawa materialnego i ustrojowego, a z drugiej strony siła tego systemu prawa leży w tym, że jest ono o charakterze władczym.

Słowa kluczowe: administracja, prawa administracyjne, władztwo, błędy legislacyjne