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Fr. Dr. Renata Kusiak-Winter

Universität Breslau

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Vorwort

Prof. Frank Nolden

Rektor

Liebe Leserinnen, liebe Leser,

es ist mir heute eine besondere Freude, Ihnen mit Heft Nr 7 der Meißner Hochschulschriften erstmalig eine englischsprachige Ausgabe unserer wissenschaftlichen Schriftenreihe vorlegen zu können. Die Beiträge zu Heft 7 sind im Rahmen einer internationalen wissenschaftlichen Konferenz mit dem Titel „Current research problems in Administrative studies in Poland and Germany" an der Universität Breslau im Oktober 2016 entstanden. Aufgrund des Umfangs der Beiträge werden die Beiträge zeitnah in Heft Nr 8 der Schriftenreihe fortgesetzt und abgeschlossen.

Die insgesamt fünfzehn Beiträge sowohl deutscher als auch polnischer Autoren/-innen wurden bereits im Vorfeld zu den aktuellen Heften der Schriftenreihe sowohl in der Wroclaw Review of Law, Administration & Economics als auch auf der Internetplattform De Gruyters Open international veröffentlicht. Sie decken eine große Bandbreite verschiedenster Themen aus dem Bereich der öffentlichen Verwaltung und den Rechtswissenschaften ab. So z.B. zu den öffentlichen Aufgaben der Kommunen in Polen und Deutschland, zum Verhältnis zwischen Bürgern und Sozialverwaltung, zur vergleichenden Rechtwissenschaft, zur Ressource Mensch in der Verwaltung oder der Besteuerung der öffentlichen Hand in Deutschland und Polen. Durch die Betrachtung der Themen sowohl aus deutscher als auch polnischer Sicht ergeben sich interessante Gemeinsamkeiten, wie nicht anders zu erwarten aber auch Abweichungen. In jedem Fall stellen die Hefte 7 und 8 der Meißner Hochschulschriften einen kleinen Beitrag zur Stärkung des gegenseitigen Verständnisses in einem zusammenwachsenden Europa der Regionen dar.

Mein besonderer Dank gilt an dieser Stelle Fr. Dr. Renata Kusiak-Winter von der Universität Breslau, die nicht nur bereits die internationale wissenschaftliche Konferenz in Breslau, sondern auch die nachfolgenden Publikationen federführend begleitet hat.

Ich wünsche Ihnen eine angenehme und informative Lektüre.

Ihr Frank Nolden

Meißen im September 2018

CURRENT RESEARCH PROBLEMS IN ADMINISTRATIVE STUDIES IN POLAND AND GERMANY

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This publication is the result of a Polish-German scientific conference entitled *"Current research problems in Administrative Studies in Poland and in Germany*". The conference took place on October 21st and 22nd, 2016 in Wrocław and was organised as part of the Lower Silesian Meeting of Researchers in Administrative Studies. The event was attended by researchers, academic teachers and a large group of students (including PhD students) of the Faculty of Law, Administration and Economics of the University of Wrocław and the Meissen University of Applied Administrative Sciences, Centre for Continuing Education (*Hochschule Meissen und Fortbildungszentrum*). The thematic scope of the conference was focused on a set of civilizational challenges and problems faced by public administration entities in both countries.

After a period of systemic transformation and after Poland's accession to the European Union the country has gone through a period of organising international meetings and conferences. The objective of these conferences was to facilitate the mutual learning of legal systems coupled with an identification of similarities and differences between particular national models of public administration. The comparative studies hitherto conducted indicate clearly that the structural and functional layout of the Polish public administration system has a number of connections and shared features with its German counterpart – despite the fact that there are, unfortunately, significant differences in the levels of public spending in the

two countries. Currently, the preferred object of comparative studies between the two countries is problem-solving and modes of addressing the challenges of modernity as well as presenting recommended changes in legislation or improvements in the methods of public governance. This is the current object of study for the scholars who deal with administrative studies, and, at the same time, a determinant of teaching and training curricula at universities and other tertiary education institutions.

Although the history of cooperation between experts in administrative law from Saxony and Lower Silesia is not a very long one, it is rich in its content. The collaboration was launched in May 2015 during a Polish-Czech-German conference organised at the Faculty of Law, Administration and Economy of the University of Wroclaw. The conference's lead theme was "*European territorial cooperation for the development of the border areas of Poland, Czech Republic and Germany."* Later that year, in August, students from the Faculty of Law, Administration and Economy took part in an International Summer Course in Meissen where, in addition to inspiring discussions with politicians and representatives of ministries of Saxony, the focus was also on integrating the community of students and PhD students from Germany, Poland and the Ukraine.

The scope of subjects discussed during the last conference resulted in a selection of articles for this volume and was developed after consultations with research and teaching staff of both universities. This volume, entitled *"Current research problems in Administrative Studies in Poland and in Germany",* reflects both the object of research and elements of the curriculum for future civil servants applied at both universities. The articles constitute a perfect point of departure for the preparation of future joint research projects in the field. Furthermore, from a practical angle the volume facilitates research aimed at finding mutually applicable solutions to existing problems.

A characteristic feature of most of the articles presented in this volume No 7 and 8 is the fact that they address concrete thematic issues from the perspective of both Poland and Germany as analysed by scholars from Wrocław and Meissen. The resulting dual viewpoint on the same issues shows the complexity of the determinants which impact administration and its functioning in both countries.

In the first part of this edition of WRLAE we present some questions concerning comparative studies in administrative law, with particular emphasis on the links between the public administrations of Poland and Germany (Renata Kusiak-

Winter, Magdalena Tabernacka, Barbara Zyzda). According to the authors, the essence and importance of the contemporary comparative studies in administration must be perceived in the broad context of their cognitive objectives, the quest for new directions for the development of administrative comparative studies, and the necessity to build bridges and communication channels, learn from others and inspire the undertaking of new forms of structuring administrative phenomena.

Further subjects in the volume No 7 and 8 are presented in parallel by researchers from Meissen and Wrocław. Frank Nolden and Jerzy Korczak describe the current challenges and expectations facing the system of education and management of human resources in public administration. The authors quote recently acquired statistical data from Saxony and Lower Silesia. While the German perspective is dominated by unfavourable demographic developments in the country, in Poland the quality of HR management in Lower Silesia is determined by a low quality of the relevant administrative regulations passed down by the central lawmaker. The resulting disadvantageous HR situation of this region of Poland is no different than that of the country's other regions.

The next subject presented in the volume No 7 and 8 is that of social assistance, in particular the relationship between citizens and the social assistance administration. In their articles, Matthias Thum and Dominika Cendrowicz discuss some elements of the system of social assistance with its fundamental principles of equal access and social justice. The German article sees highly detailed and complicated regulations as a major drawback of the welfare system, whereas the Polish article, to the contrary, presents the extensive system of legal regulations as a guarantee for the fulfilment of social needs, and a guarantee for the correct shaping of the state's social assistance policy.

Further tandem articles by Polish and German authors focus on selected aspects of financial management and financial law: Isabelle Jänchen and Przemysław Pest analyse financial equalization instruments by taking two different perspectives: a broad one and a narrow one. Isabelle Jänchen adopts a broad European perspective and looks at the causes of the lack of comparable metrics for the assessment of integrated budget management across different European countries. Przemysław Pest, in turn, focuses on a local and regional perspective on equalization of revenues of Local Self-Government Units (LSGUs) in Poland.

Another question regarding public finance addressed by the articles is the taxation of public entities in Poland and in Germany. Fritz Lang, Andrzej Huchla and Pierre Frotscher analyse the relevant legal regulations. German lawmakers have introduced separate tax obligations for public entities. In turn, Polish acts of tax law do not even contain the general category of public sector entities. Despite that difference it turns out that, due to Poland's EU membership, it is of primary importance to facilitate unrestrained competition and avoid preferential tax treatment of public entities – a requirement which is not always respected in both countries.

The volume's last subject presented in the Polish-German tandem mode is the problem of communication between bureaucracy and citizens as well as entrepreneurs, seen through the prism of information asymmetries. Claudia Lubk perceives the asymmetries as a major source of a negative image of bureaucracy in Germany, and goes on to indicate a number of possible strategies to remedy the problem. In turn, Agnieszka Chrisidu Budnik and Justyna Przedańska offer a critical analysis of the Polish public procurement system in which the lawmakers did not take into account the phenomenon of information asymmetry in the communication between bureaucracy and entrepreneurs.

The articles by Polish and German researchers presented in this volume No 7 and 8 and focused on the same or similar subjects indicate clearly that despite the distinctness of the two legal, economic, financial and demographic systems, and despite different organisational cultures which determine the structures and functions of public administration, the results of the scientific research presented here have one common denominator. That denominator is the quest for objective truth, as well as posing inquisitive and challenging questions concerning the functioning of public administration, its social reception and the desired directions for its future development.

I would like to express my heartfelt thanks to the Authors of the articles in this volume, in particular to our friends from the Meissen University: thank you for your important and inspiring contributions to the final shape of this edition of the Wroclaw Review of Law, Administration and Economics. Let me also express my sincere hope that the results of the research presented here will constitute an incentive for further in-depth research initiatives and new joint research and teaching initiatives being taken up by our Universities.

THE EVOLUTION OF COMPARATIVE ADMINISTRATIVE LAW STUDIES

1 INTRODUCTION

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Administrative law is traditionally viewed as a distinct legal discipline with a high rate of inward looking elements which convey the uniqueness of the set of political, social, historical and economic conditions inherent in each state – hence, different from any solution followed elsewhere. As a basic instrument of control applied to social relationships in the state, administrative law has to be modified and adapted as required by the ever changing reality.

This necessity of responding to all changes in the immediate environment implies two important features of administrative law – its flexibility and its fragmentary nature which appear to contrast with the other branches of law. For example, civil law or criminal law are codified and comprise certain cannons of universal legal institutions such as a contract, inheritance or imprisonment or re-offending. Each of them should individually demonstrate a high degree of resistance to any political or economic changes. Encapsulated in a single act that provides a timeless guarantee of human and civil rights and regulates the most important systemic aspects of the state, constitutional law is rather reasonably expected to demonstrate a high degree of stability.

Administrative law is an entirely different matter being complex and heterogeneous, the concept of codification was abandoned at the start. It is the constantly changing reality of

the administrative process that forces amendments to the legislation. One should bear in mind the fact that administrative law reflects the political vision of the ruling party. Therefore it may rather be hard to draw conclusions based on the letter of the law. The danger of "language traps" appears exceptionally realistic, also in the context of the whole realm of administrative studies. For example, on the one hand, administrative policy or sociology of administration exploits the universal language grid developed in political science or sociology and understood in all languages in the same way[1]. On the other hand, translating and, what is more, understanding domestic administrative institutions in different countries in a harmonised way poses a daunting challenge[2]. The reason is that the conceptual framework of administrative law reflects the structural qualities of a single state which are deeply embedded in one particular system of administrative law[3]. In this spirit, one may adduce the following frequently quoted words of Ulrich Scheuner: "the structure of the state administration provides a special reflection of its unique nature and identity"[4]. This line of thinking is also followed by Jan Jeżewski, who notes that "historical conditions have made an impact on many solutions applied to the member state administrative structures – which are, relatively, the least prone to harmonisation (institutional autonomy)"[5]. Therefore it appears that (in the case of an individual state) administrative law has built its own development paths, its unique discourse paradigms and self-observation mechanisms as regards to its doctrine and case-law[6].

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1 Geert Bouckaert, John Halligan, Managing Performance: International Comparisons (Routledge 2008); Sabine Kuhlmann, `Performancesteuerung und Leistungsvergleich: Verwaltungsmodernisierung im kontinentaleuropäischen, angelsächsischen und skandinavischen Kontext` in Joachim Beck, Fabrice Larat (eds), Reform von Staat und Verwaltung in Europa – Jenseits von New Public Management? (Nomos 2011) 90.

2 Veith Mehde, `Verwaltungswissenschaft, Verwaltungspraxis und die Wissenschaft vom öffentlichen Recht – Eine Bestandsaufnahme` in Veith Mehde, Ulrich Ramsauer, Margrit Seckelmann (eds), Staat, Verwaltung, Information. Festschrift für Hans Peter Bull zum 75. Geburtstag (Duncker&Humbolt 2011) 686.

3 Thomas Fleiner, `Rechtsvergleichende Überlegungen zum Staatsverständnis in Ländern mit anglo-amerikanischer und kontinentaleuropäischer Rechtsordnung – Rechts- und staatsphilosophische sowie kulturelle Aspekte` in Peter Häberle, Martin Morlok, Wassilios Skouris (eds), Staat und Verfassung in Europa (Nomos 2000) 46.

4 Ulrich Scheuner, `Der Einfluss des französischen Verwaltungsrechts auf die deutsche Rechtsentwicklung` (1963) 17/18 Die Öffentliche Verwaltung 714.

5 Jan Jeżewski, `Porównawcze badania prawa a europeizacja prawa administracyjnego` in Zbigniew Janku, Zbigniew Leoński, Marek Szewczyk, Michał Waligórski, Krystyna Wojtczak (eds), Europeizacja polskiego prawa administracyjnego (Kolonia Limited 2005) 55.

6 Eberhard Schmidt-Aßmann, Stéphanie Dagron, `Deutsches und französisches Verwaltungsrecht im Vergleich ihrer Ordnungsideen – Zur Geschlossenheit, Offenheit und

...

The above described inward looking character was the reason for administrative law being kept on the siding of legal comparative studies for many years. What made administrative law provide a focus for an intensive comparative inquiry was an urgent need for practical applications that was triggered by the expanding European integration and the globalisation of social and economic processes. The aim of this paper is to show the complex premises applied in comparative studies of administrative law and discuss the needs specific to academic research and practical applications – the legislature, the judiciary and the executive. I will demonstrate that the research on comparative law significantly changed its ways and function over the years, but it has made a permanent contribution to a deeper reflection on applicable law.

2 THE NEEDS OF ACADEMIC RESEARCH

Comparative legal research is originally and primarily premised on a scholarly urge to explore the legal solutions of another state – a motivation that is derived from one's curiosity and determination to improve one's knowledge. It should be emphasised that comparative studies have a cognitive purpose, and thereby an academic value, even if no clear and precise research goal has been set. Nonetheless, in reality, they always provide a starting point for further research projects. They facilitate universal communication among scholars in academia, support the teaching of law and improve the quality of studies on one's own legal order[7].

Bearing in mind the centuries-old tradition of civil law that dates back to the period of the Roman Empire, administrative law – as developed in the continental Europe in the 19th century – is a young discipline of law. When the primary premises of comparative research in these two realms of law are contrasted it becomes clear that, due to the common roots and shared traditions, the trend in civil law was to unify or at least harmonise its major institutions beyond borders. Administrative law was however created by each sovereign state separately and therefore the focus was on the learning aspect[8].

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gegenseitigen Lernfähigkeit von Rechtssystemen` (2007) 67 Zeitschrift für ausländisches öffentliches Recht und Verwaltungsrecht 395.

7 Thomas Groß, `Rechtsvergleichung` (2015) 48 Die Verwaltung 581.

8 Christoph Schönberger, `Verwaltungsrechtsvergleichung: Eigenheiten, Methoden und Geschichte` in Armin von Bogdandy, Sabino Cassese, Peter M. Huber (eds), Handbuch Ius Publicum Europaeum: Verwaltungsrecht in Europa: Wissenschaft, vol 4 (C.F. Müller 2011) 499.

Once applied to the reality of Poland, the above thinking will reveal an important special case. The period of time when administrative law was created and formed also saw Poland losing its statehood. It is symptomatic, in particular if we recognise the natural and indispensable bond between the administration and the state. After all it was the state that would establish administrative law and provide the foundation of a strong and efficient administration in order to attain its ambitious goals and strengthen its position. Where there was no state there was *de facto* no administration. With no statehood the comparative studies conducted at that time by local experts referring to the best European models[9] fulfilled an important integrating role when independence was regained. The research was a unique and important link for administrative law to define itself as a branch of law and gain coherence as a separate and self-contained research discipline. Interestingly, the first Polish handbook of administrative law by Antoni Okolski was inevitably comparative by nature and based on the laws of Prussia, Austria and Russia[10]. Furthermore, the restoration of the Polish state in 1918 was naturally accompanied with resorting to the legal solutions followed by the former partitioners as much as those applied in France or England. They were subsequently adopted to serve the purpose of the country's territorial division and administrative courts. One may hazard a guess that in the absence of the state, the inspiration that comes from the solutions offered by a foreign system of administrative law and the ownership of these solutions may foster a sense of continuity of the state, and in the long term, promote creating an identity in the meaning of legal tradition[11].

The history of comparative law studies in Poland shows that comparative research played an important role not only in the days of statelessness but also in the era of the Polish People's Republic, known by the acronym of the PRL. A monograph on the legal position of an individual to the activities of public

9 Fryderyk hrabia Skarbek, Gospodarstwo narodowe. Elementarne zasady gospodarstwa narodowego, vol I-II, (Biblioteka Wyższej Szkoły Handlowej 1820); Józef Bohdan Oczapowski, Policyści zeszłego wieku i nowożytna nauka administracji. Historia nauki administracji w XVIII wieku (Drukiem S. Orgelbranda Synów 1882); Franciszek Ksawery Kasparek, Prawo polityczne ogólne z uwzględnieniem austriackiego razem ze wstępną nauką ogólną o państwie, vol I-II (Kraków 1877-1881).

10 Antoni Okolski, Wykład prawa administracyjnego oraz prawa administracyjnego obowiązującego w Królestwie Polskim (vol. I – 1880, vol II – 1882, vol III – 1884). See Eugeniusz Ochendowski, `Pierwszy polski podręcznik prawa administracyjnego. Wstulecie wydania podręcznika A. Okolskiego` (1981) 1 Organizacja, Metody, Technika 27– 28.

11 Andrzej Wróbel, `Landesspezifische Ausprägungen: Polen` in Armin von Bogdandy, Sabino Cassese, Peter M. Huber (eds), Handbuch Ius Publicum Europaeum: Verwaltungsrecht in Europa: Grundlagen, vol 3 (C.F. Müller 2010) 238, 243 et seq.

authorities in some West European States by Franciszek Longchamps de Bérier is a meaningful example[12]. By describing western standards his work induced reflection on the absence of safeguards protecting the individual against the lawlessness of the people's rule and thereby it turned out to be a voice of silent critique[13]. Comparative law played an instrumental role to this effect by integrating different circles of administrative professionals around the fundamental values of public administration – the values of the democratic state.

In its early days comparative law had yet one more important function – the one of building the systematics of administrative law. Considered the "cradle" of administrative law, France became the destination for seeking its best models. The French solutions found their great apologist in Otto Mayer. Before writing his handbook that *de facto* established administrative law in Germany, he had completed a thorough analysis of French institutions[14]. The greatest credit should probably go to him for conceptualising the administrative act as the fundamental form of the activities of the public administration in the state of law[15]. Interestingly, the concept of the administrative act was adopted by most of European states in the form proposed by Otto Mayer rather than imported directly from France, a clear evidence of the importance of comparative reflection in administrative law[16].

The development of the public service doctrine and the service administration doctrine is another important example showing how the

comparative method is employed in the quest for a systematics of administrative law terms and institutions. In this case the starting point was to analyse the French institution of *service public* from the perspective proposed by Léon Duguit and his followers including such renowned administrative law experts as

12 Franciszek Longchamps de Bérier, Współczesne kierunki w nauce prawa administracyjnego na zachodzie Europy (Zakład Narodowy im. Ossolińskich 1968).

13 Irena Lipowicz, `Einfluss des deutschen Verwaltungsrechts auf die Lehre des Verwaltungsrechts in Polen` (2015) 48 Die Verwaltung 370.

14 Otto Mayer, Theorie des Französischen Verwaltungsrecht (Trübner 1886).

15 Reimund Schmidt-De Caluwe, Der Verwaltungsakt in der Lehre Otto Mayers (Mohr Siebeck 1999).

16 Otto Mayer significantly influenced the development of the first handbooks of administrative law in Italy and Spain. See Vittorio Emanuele Orlando (ed), Primo trattato completo di diritto amministrativo (Cammeo&Vitta 1897); Adolfo Posada, Tratado de Derecho administrativo (Suárez 1893).

Gaston Jèze or André de Laubadère[17]. On the ground of German law, the development of this conception into *Lestungsverwaltung* and *Daseinsvorsorge* was fostered by the work of Ernst Forsthoff[18] who exerted a decisive impact on the work of Polish administrative law experts, such as Tadeusz Kuta[19] or Ernest Knosala[20].

The above cited examples show the importance of comparative research for the making and developing of the classic administrative institutions. It should be emphasised that in addition to the analysis of foreign law the key method employed in scientific or scholarly cognition is verifying the dogmatic rationale that invokes the elementary principles and values underpinning the established legal solutions in question.

A discussion of the role of comparative studies for the needs and development of academic research must allow for an account of contemporary problems. In particular, in the context of European integration it transpires that there is no raison d'être for a one-way reception pattern with regard to the transfer of administrative law dogma from one state to the other. What we can observe in practice is a multidirectional mechanism of mutual learning with its starting point being the traditional institutions of administrative law. It is in the course of the process that they are transformed under the influence of supranational mechanisms[21].

The above changes will be best illustrated with the development of the classic forms of operation employed within administrative law under the influence of European law. A transnational administrative act relates in many points to the

17 Gilles J. Guglielmi, Une introduction du droit de service public (LGDJ 1994) 5–7.

18 Ernst Forsthoff, Die Verwaltung als Leistungsträger (Kohlhammer 1938); Ernst Forsthoff, Rechtsfragen der Leistenden Verwaltung (Kohlhammer 1959); Irena Lipowicz, `Pojęcie administracji świadczącej w doktrynie zachodnioniemieckiej` in Karol Podgórski (ed), Regulacja prawna administracji świadczącej (Uniwersytet Śląski 1985) 131 et seq.

19 Tadeusz Kuta, Aspekty prawne działań administracji publicznej w organizowaniu usług (Zakład Narodowy im. Ossolińskich 1969); Tadeusz Kuta, Funkcje współczesnej administracji i sposoby jej realizacji (1992) Acta Universitatis Wratislaviensis. Prawo CCXVII 12 et seq.

20 Ernest Knosala, `Pojęcie administracji świadczącej w polskiej literaturze prawa administracyjnego` in Karol Podgórski (ed), Regulacja prawna administracji świadczącej (Uniwersytet Śląski 1985) 16.

21 Stephan Neidhardt, Nationale Rechtsinstitute als Bausteine europäischen Verwaltungsrechts. Rezeption und Wandel zwischen Konvergenz und Wettbewerb der Rechtsordnungen (Mohr Siebeck 2008).

mechanism operating in the different member states[22] but the cooperation within the European public administration network requires a new conceptualisation. This type of cooperation does not match any classical category applied to the cooperation of public entities within a single legal system of an individual country[23]. This cooperation is highly informal. It involves exchanging information, coordinating activities and giving recommendations and guidelines. In accordance with the administrative doctrine, however, new legal constructs should comply with the same basic requirements and standards as those set for the cooperation among public entities at the national level. Therefore, in the comparative perspective we are expected to demand that democratic control and accountability be enforced, especially when liaising authorities are not limited to entities from the EU member states but also originate from thirdparty states[24].

3 THE NEEDS OF THE LEGISLATURE

It is transfer of law as a fundamental function of comparative legal research that has come to the fore of the legislative process. Complex codified regulations or individual legal institutions are not transferred on the one-to-one basis. They are subject to adjustment and adaptation in the course of the legislative process[25]. All transfers of laws are guided by the principle of practical legislative need. It is, however, important to realise that they are accompanied and promoted by a set of specific conditions.

The first and obvious condition is for the legislator to be open and willing to explore and exploit other models. From a historical perspective the 19th century is defined as the "age of comparison" in literature. As regards legal scholarship, the rule of supranational laws of nature came to an end. The shared pan-

22 Luca de Lucia, `Administrative Pluralism, Horizontal Cooperation and Transnational Administrative Acts` (2012) 5 (2) Review of European Administrative Law 42; Dawid Miąsik, Andrzej Wróbel, `Europeizacja prawa administracyjnego – pojęcia i konteksty` in Roman Hauser, Andrzej Wróbel, Zygmunt Niewiadomski (eds), Europeizacja prawa administracyjnego. System Prawa Administracyjnego, vol 3 (C.H. Beck 2014) 22.

23 Jerzy Supernat, `Koncepcja sieci organów administracji publicznej` in Jan Zimmermann (ed), Koncepcja systemu prawa administracyjnego (Wolters Kluwer 2006) 207.

24 Peter M. Huber, `Grundzüge des Verwaltungsrechts in Europa – Problemaufriss und Synthese` in Armin von Bogdandy, Sabino Cassese, Peter M. Huber (eds), Handbuch Ius Publicum Europaeum: Verwaltungsrecht in Europa: Grundzüge, vol 5 (C.F. Müller 2014) 23.

25 A chemical term of "transfer" is deliberately used to make the reader realise law in the process of transfer is seen as a special laboratory providing capacity to weigh the letter of law and measure legal reality, see Margrit Seckelmann, `Ist Rechtstransfer möglich? – Lernen vom fremden Beispiel` (2012) 43 Rechtstheorie 425.

European body of law written in Latin was also discarded. They would be all replaced by constitutions enacted in national languages and Napoleon would trigger a large scale consolidation of national law through its codification. The building up of national awareness and the fostering of a sense of state identity was accompanied by exceptional openness and a zest to draw on external legal models. As noted by Christoph Schönberger, the European constitutions enacted at short intervals were developed as closely interdependent, mutually related acts and reacted to each other accordingly[26].

In Poland this opening could only take place when the country regained its independence in 1918. The reception of the Austrian administrative code, to be precise one of the bills drafted in 1925, provides an excellent example of the process. Enacted in 1928 and most recently revised in 1960, the code[27] was given very favourable reviews and has since continued to successfully serve its purpose and exert a powerful impact on the subsequent development of the administrative law and doctrine in Poland. The institution of territorial self-government of the 2nd Republic also exhibited many common features shared with the models largely followed in the Europe of the day[28]. Considering the closed character of the political system in the cold war era, it is important to bear in mind that this type of openness is not inherent or installed once and forever in legal culture[29].

Second, what in addition to openness stimulates all law-transfer efforts is the occurrence of similar problems or issues which have already been addressed with a comprehensive legal solution by other states. To cite the example of Poland, after the 1989 transformation of its polity, the country faced a challenge of passing an administrative law to protect the right to privacy. The Act on the Protection of Personal Data was enacted in 1997. It reputedly drew on the law of

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26 Chistoph Schönberger `Verwaltungsrechtsvergleichung: Einheiten, Methoden und Geschichte` in Armin von Bogdandy, Sabino Cassese, Peter M. Huber (eds), Handbuch Ius Publicum Europaeum: Verwaltungsrecht in Europa: Wissenschaft, vol 4 (C.F. Müller 2011) 520-521.

27 Regulation of the President of the Republic of Poland of 22 March 1928 on administrative proceedings, Dziennik Ustaw – Official Journal of Laws of the Republic of Poland (hereinafter: Dz. U.) No 36, item 341. For broader treatment see Władysław Czapiński, `Nowe prawo o postępowaniu administracyjnym` (1928) 4 Gazeta Administracji i Policji Państwowej 289 et seq.

28 Jerzy Panejko, Geneza i podstawy samorządu europejskiego (Imprimerie de Navarre 1926); Tadeusz Bigo, Samorząd terytorialny w nowej konstytucji in Księga pamiątkowa ku czci Leona Pinińskiego (Komitet Redakcyjny 1936).

29 Janusz Łętowski, `Comparative Law Science in So Called Applied Fields of Law` (1991) 2 Comparative Law Review 30.

the federal state of Hesse. In 1970, Hesse passed the world's first act on the processing of personal data by a public administration entity (or an entity authorised to provide or operate public services)[30]. This example clearly shows that from the legislator's angle, the process of transferring laws must equally focus on the text of a law and the practical experience of its implementation and operation. In the above example, the Hessian law had been reviewed and amended on many occasions in the process of mutual learning and interacting of the German state legislatures on the federal level. It was not without significance that a well-established case-law had already existed inclusive of the Federal Constitutional Court's decisions[31]. Much as the European legislation compels the adoption of a new formula for personal data protection to keep pace with the progress of technology and respond to the increase in data volume on a gigantic scale[32], the merits and consequence of the existing law must not go unnoticed. Inspired by foreign legislation and ably modified to accommodate specific Polish needs and requirements it is seen as a remarkable achievement of the Polish legislative effort[33].

Third, the main focus and dominant object of modern comparative studies carried out for the needs of the legislature are institutional factors and determinants. It is true that the institution of federal states provides a natural platform for a regular transfer of the best legal solutions since federal states traditionally engage in specific competition in developing the best legislative models[34], however the membership in supranational organisations has led to the development of law transfer on an unprecedented mass scale despite cultural and linguistic barriers.

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30 Lipowicz (n 13) 375.

31 See in particular judgement Bundesverfassungsgericht, BVerfGE 65, 1 (44).

32 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, 1–88. To take effect from 25 May 2018.

33 As noted by Irena Lipowicz „The (..) regulation of the European Parliament and of the Council is practically supposed to supersede the current Data Protection Act – our pride and our own achievement – in the Polish legal system", see Irena Lipowicz in 1998-2013 15 Years of the Act on the Protection of Personal Data in Poland (GIODO 2013)

34 In this sense the competition of public entities for "the best" legal regulations has been discussed in the literature for years now (the so-called competition of legal orders), see Veith Mehde, Wettbewerb zwischen den Staaten (Nomos 2005); Henning Jensen, Kommunale Daseinsvorsorge im europäischen Wettbewerb der Rechtsordnungen (Mohr Siebeck 2015).

Clearly, European administrative law is a result of mutual receptiveness between the states and the Union. In order to make and improve European laws the EU refers to national legal mechanisms which have evolved over time in a specific cultural environment. Such mechanisms are modified, adapted and diversified. Once transplanted, they influence the national law order, for example, indigenous national mechanisms which were originally employed as their prototypes[35]. In this situation the system may reach a turning point due to the effect known as a spill-over into national law. A spill-over involves an effect produced by EU law – through its mandatory presence within the national system – on such areas of domestic law where EU bodies may not claim any competence to interfere. A consequence of this process is the convergence of national law[36].

Top-down mandatory transfers of law within supranational structures appear to reveal cultural differences. A useful example is the right to good administration established under article 41 of the Charter of Fundamental Rights basing on the original model from Scandinavian culture[37]. The idea of creating a subjective right of an individual to good administration in the continental systems of public administration appears to be at odds with the concept of individual rights derived from the fundamental rights enshrined in the constitution. The "oddity" comes from the difference between the Scandinavian tradition that follows the ideal type of adjective (procedural) law – the ideal type of legal procedure and the continental (German or French) tradition with its formalist ideal type relating to the enforcement of fundamental rights[38]. The critics suggest that the transfer may in this particular case open the door to the harmonisation of national administrations, albeit with no actual competence on the part of the EU bodies[39].

35 To quote the example of the protection of legitimate expectations that was established in German case-law and subsequently adopted by the ECJ for the purpose of its decisions. It should be noted that while the said institution guarantees full protection in Germany, in EU law, the ECJ has reduced it to the status of limited exceptional application. See Neidhardt (n 21) 138.

36 Ibid.

37 Kai-Dieter Classen, Gute Verwaltung im Recht der Europäischen Union. Eine Untersuchung zur Herkunft, Entstehung und Bedeutung des Art 41 Ab 1 und 2 der Europäischen Grundrechtecharta (Duncker&Humbolt 2008) 74–94.

38 Gunnar Folke Schuppert, Politische Kultur (Nomos 2008) 711.

39 Seckelmann (n 25) 425.

There is a concern over national administration being seen as detached from the state[40].

The above discussion clearly demonstrates that non-obligatory, elective, law transfers are conditional on the recipient system of law being open and showing a range of similar problems and issues which require legal solutions. Such transfers are carried out on the sole initiative and at the option of the legislator. Apparently, with regard to their goals and methods, comparative studies do not concentrate so much on the rendition of the "transferred" normative act or the existing case law and an established line of authority for their chief purpose is to capture the common conditions and values lying behind the idea of legislative changes. While scholarly comparative research aims at treating different legal orders in an equal manner to capture their commonalities and differences, comparative research carried out for the needs of the legislator of a specific state shall deal with the transferred law in an instrumental manner with efforts to be expended on its adaptation to the needs of the legal order of the recipient state, which is the reason why the transfer results in a new and independent legislative product that widely differs from the original model.

Meanwhile, the obligatory transfers of law completed in supranational organisations on a massive scale strive for the goal of ensuring that the law of the member states reaches a set degree of unification. In these circumstances, comparative studies begin with the awareness that the imposed regulations are not invented in a legislative vacuum but come from certain national legal orders. Comparative research should then be conducted at multiple stages. First to deal with the model legislation. Second, to accommodate the supranational legislator's alterations and improvements. Third, to examine, in the context of the results obtained at stages one and two, how the legal mechanism operates in the recipient law. The comparative research employs for this purpose a highly complex and comprehensive method that involves the knowledge of the letter of law, the applied line of authority and case-law as much as a broad cultural context of the law that is the object of the studies.

40 Armin von Bogdandy `Verwaltungsrecht im europäischen Rechtsraum – Perspektiven einer Disziplin` in Armin von Bogdandy, Sabino Cassese, Peter M. Huber (eds), Handbuch Ius Publicum Europaeum. Verwaltungsrecht in Europa: Wissenschaft, vol 4 (C.F. Müller 2011) 5.

4 THE NEEDS OF THE EXECUTIVE AND THE NEEDS OF THE JUDICATURE

The purpose of the executive branch and the judicature is to enforce the applicable law by putting it into operation and examining disputes which arise in connection with the enforcement and operation of the law. As opposed to the legislature, which is vested with law making power and not unreasonably expected to utilise the best (also foreign) models, the executive or the judiciary should not, as a point of principle, search for inspiration elsewhere in the process of applying law. Used as a reference or a benchmark, legal solutions developed in a different legal culture, hence alien to the circumstances and reality of one's domestic administration process, carry a dangerous potential to treat comparative studies in an instrumental way and exploit them in passing discretionary or probabilistic decisions[41].

It is the principle of territoriality that guides public authorities in applying law. This is also where the main difference lies as regards civil law. While civil law is founded on the freedom of contract that manifests itself in the contracting parties having freedom to decide on applicable law (private international law), in administrative law, the essence of which is to exercise administrative power, a reference to a foreign law would be most unusual. This situation arises from one of the discriminants of administrative law, namely the fact that its enforcement is completely related to the state territory, in line the principle of territorial jurisdiction that governs the operation of public authorities and controls their power by determining the scope of their local competence (rationae loci) and subject matter competence (rationae materiae)[42]. Physical persons (individuals) may engage in their activities in a relatively flexible manner, enjoy the freedom of movement in space[43] or even a relative freedom of choice of state[44], or

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41 Martin Bullinger, `Zwecke und Methoden der Rechtsvergleichung im Zivilrecht und im Verwaltungsrecht` in Ingeborg H. Schwenzer, Günter Hager (eds), Festschrift für Peter Schlechtriem zum 70. Geburtstag (Mohr Siebeck 2003) 337.

42 The territorial principle is given full weight in the judgement of the Supreme Administrative Court of 25 August 2011 (I OSK 1769/10) where the court emphasises that the provisions of the Polish Road Traffic Act of 20 June 1997 (Prawo o ruchu drogowym, Dz. U. No 98, item 602) with regard to taking one's driving licence should also be applied to a driving licence issued by the public administration in Germany.

43 Free movement of people is a fundamental right granted to all citizens of European Union by virtue of the Treaties, see art 3t sec 2 of the Treaty on European Union (Dz. U. 2004, No 90, item 864/30), art 21 and Titles IV and V of the Treaty on the Functioning of the European Union (OJ C 83, 30.03.2010, 47, consolidated version); Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the EU and EEA member states (OJ L 158, 30.4.2004).

ultimately, the freedom to subject themselves to law of their choice. As products of the country's legal order designed to serve the enforcement of public law, public administration-controlled entities have no such option. Therefore, public administration bodies and courts of law will not apply foreign law unless domestic law explicitly licenses them to do so[45]. Furthermore, administrative law never requires that foreign law be applied *in toto*, but only to a limited extent. There is a doctrinal consensus with regard to the problematic issue of how to apply colliding norms in administrative law on the pattern of international private law[46].

The fact that the territorial principle remains in force does not mean that comparative studies are to be completely abandoned. Indeed, it is about linguistic interpretation being the central element in the process of applying law. Therefore, where linguistic interpretation fails to provide a clear-cut result the body responsible for the enforcement of administrative law will have to turn to functional, systematic or another type of interpretation to disambiguate the outcome of the linguistic interpretation[47]. In the context of the EU membership, the EU interpretation of law must prevail as substantiated in many examples of the ECJ case-law. The European Court of Justice indicates that the idea does not come down to implementing EU law but expands on the community-friendly harmonisation of national law during the process of its application[48]. Mindful of this purpose, comparative studies should concentrate on analysing the legal

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44 Art 34 sec 2 of the Constitution of the Republic of Poland of 2 April 1997 (Dz. U. 1997, No 78, item 483 as amended) provides that Polish citizenship is lost by renunciation. Art 46 of the Polish Citizenship Act (ustawa z dnia 2 kwietnia 2009 r. o obywatelstwie polskim, Dz. U. 2012, item 161) provides that a Polish citizen who has renounced his or her citizenship shall lose the same when he or she obtains the consent of the President of the Republic of Poland to renunciation of Polish citizenship.

45 The majority of the cases are the so-called transnational administrative acts issued by an administration body of one the member states and enforceable in the other members states by virtue of EU law. On this subject see Barbara Kowalczyk, `Zasada terytorializmu działania administracji a transgraniczność spraw administracyjnych` in Renata KusiakWinter (ed), Współpraca transgraniczna w administracji publicznej (E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego 2015) 157-166.

46 Marek Zieliński, `O pojęciu międzynarodowego prawa administracyjnego` (2008) 9 Państwo i Prawo 28; Martin Kment, Grenzüberschreitendes Verwaltungshandeln. Transnationale Elemente deutschen Verwaltungsrechts (Mohr Siebeck 2010).

47 A contrario it should be noted – to invoke a judgement of the Supreme Administrative Court – that the EU-friendly interpretation must not be employed if it produces an outcome that will contradict the effects of linguistic interpretation, which in turn may trigger the unacceptable contra legem interpretation (NSA judgement of 5 October 2016 I FSK 1106/16).

48 Miąsik, Wróbel (n 22) 78.

orders of the member states with special attention to the convergence resulting from the primacy of EU interpretation of law. Interestingly, reverse situations may also occur. Comparative studies of the constitutional practices in the EU member states provides examples to illustrate them. It concerns the fact that constitutional courts of the EU member states widely invoke the Solange doctrine developed by the German Federal Constitutional Court (Bundesverfassungsgericht) in justifying the precedence of the national constitution over the EU law[49].

The above indicates that comparative studies of application of law have different functions – searching for ideas, providing solutions to specific problems, equipping courts of law in a form of dialogue, helping optimise the normative argument used in justifications of judicial decisions or normative acts, serving as argumentation ornaments [50]. Nonetheless, it should be emphasised that comparative research must not aspire to dominate or lead the law application process, for the central argument rests on the goals and functions of applicable law.

5 CONCLUSION

Comparative administrative studies pose a difficulty with regard to a clear division between the academic research goals and the research goals set to cater for the needs of the legislative process or the practical application of law (the executive and the judicature). The interests invariably centre on a deep analysis of two independent legal orders allowing for commonalities and differences, interdependence, determinants and cause-and-effect relationships. Comparative studies are on every level of research premised to attain cognitive goals, explore new ideas, search for development impulses or new problem-solving methods, build bridges and communication, attain the goals of reflection, judgement and learning from others. They also facilitate the quest for methods to systematise both new phenomena and the existing ones.

The nature and scope of comparative studies is traditionally determined by the unique character of administrative law with its high rate of insular elements

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49 The Solange doctrine has won approval of the Constitutional Court in Poland, see Judgement of 11 May 2005, K 18/04, OTK-A 2005, No. 5, item 49. On this subject see Bogusław Banaszak, Limitation of Sovereignty by the European Integration – The Polish Approach in Rainer Arnold (ed), Limitations of National Sovereignty through European Integration (Springer 2016) 99-108.

50 Miąsik, Wróbel (n 22) 10.

accounting for the characteristics of different states. Comparative studies are also flexible (variable) and fragmentised by nature. These two qualities appear to remain valid but the insular characteristics have been largely reduced as a result of loosening the ties of the administration with the state. This consequently influences comparative studies as we may draw a clear dividing line between the research on independent legal orders in the phase of no connections among the states and the phase of a high degree of interdependence and interaction among the legal orders in the membership frame of supranational organisations such as European Union. With European law in place reducing top-down the insular elements of administrative law, comparative studies should focus on the cultural and axiological context of pliancy or resistance to any further efforts stimulating convergence.

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THE AREA AND ASPECTS OF POLISH AND GERMAN STUDIES ON PUBLIC ADMINISTRATION

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A goal, a purpose and a foundation – these three categories define the scope of any scientific or scholarly research. Hence, the field of investigation.

A need or necessity compelling a scholar to undertake a study evolves from certain facts, certain objective states of reality which are to be assessed and evaluated. In the case of Polish and German scholarship the main underlying fact is the neighbourship of the two countries with any and all social consequences which may stem from this state of things and exert an impact on the operating choices made by the bodies of public administration on both sides of the border.

The academic studies both in administrative law and administration conducted in Poland or Germany do not see differences as regards the role of the public administration bodies under the rule of the democratic state of law. The bodies of public administration in this type of polity are treated as elements of the law enforcement power. Therefore, in Poland or Germany, their competences include acting in their capacity of public task providers, which in practice means that they cater for the needs of individuals and communities[1]. Where public tasks are carried out in two neighbouring states with an intense interaction and exchange between the two communities, a common procedural policy let alone a set of shared rules with a significant legal impact must be developed.

1 Definition of public responsibility: Jan Boć, 'Prawo administracyjne' [Administrative law] (Kolonia Limited 2010) 15.

Business or commerce are not the exclusive spheres necessitating such steps. There is the entire social area where public administration entities are entrusted with a range of duties such as family relationships, children born to binational parents or single nationality foreign families who have settled in the neighbouring country. One inevitably deals with all kinds of policies which can be denoted as administrative policy understood, according to Jan Jeżewski, as the policy in line with which the administration engages in the different areas of its competence to execute statutory public tasks, set goals, establish priorities, plan for executive measures and implementation methods and predict outcomes, all of which is termed by the author as: administration policy[2]. These policies call for a set of common rules and shared coordination, which appears particularly important for environmental protection in the broad sense of the phenomena and the implementation of different EU policies. A common operating platform determines a need for common research efforts made "together" or through parallel programmes launched on both sides of the border with shared goals to tackle the same range of problems from the perspectives of each state.

A multicultural perspective is the main factor to be considered in determining the lines of the Polish and German research on the operating conditions and methods of public administration. It pertains to the impact exerted on the administration by the society seen as its environment and to the administration itself, or to be precise, its organisation culture followed by its bodies and units that conditions the actions and conduct of individuals who are employed there.

In every state or its sub-structure, public bodies operate according to a set pattern known as a culture of the public administration system. It evolves as a consequence of the interacting historical, political and sociological processes and at the same time is naturally a product of the law. Cultural differences do not only lie in the arrangement of organisational structures or the distribution of power but also in a degree of formality maintained in the relationships between civil servants and local authority officers, on the one hand, and public administration staff, on the other hand or the type and form of liaisons, communication protocols or etiquette when it comes to showing interpersonal

2 Jan Jeżewski, 'Polityka administracyjna. Zagadnienia podstawowe' [Politics of Administration. The basics problems] in Adam Baś, Jan Boć, Jan Jeżewski (eds), Nauka Administracji [Science of Administration] (Kolonia Limited 2013) 314.

respect and courtesy[3]. It is worth noting that operating within one legal and administrative culture inevitably leads to ethnocentrism. As a driver of social processes, law influences the mentality of its individual subjects just like the method of exercising state power influences their behaviours and perceptions of their individual places in the society[4]. Therefore Polish and German studies in public administration should also account for any operational and organisational ethnocentrism of public administration. This means a scholarly duty to investigate the historically conditioned social sphere underlying certain phenomena though not necessarily tackling the "big issues" relating to the historical past of the two countries or the interests of the state as the community. Social culture affects different aspects of the operation of individual administration systems[5]. It is important to bear this fact in mind while analysing certain universal mechanisms.

A multicultural perspective in public administration research does not imply that studies should focus on the homogenisation of administrative and legal solutions. This perspective is necessary to understand the purpose, motives and special modes of operation followed by the administrative bodies on both sides of the border. Only with this knowledge may one embark on designing theoretical models for further practical application in mutual contacts. Therefore, it is imperative that scholars allow for flexible ethnocentrism in the comparative approach to administration. In their research on flexible ethnocentrism David Matsumoto and Linda Juang reached the conclusion that what is required to develop a flexibility in contact with other people and maintain one's ethnocentrism is one's awareness of one's own cultural filters

3 Magdalena Tabernacka, Negocjacje i mediacje w sferze publicznej [Negotiations and mediations in public sphere] (Wolters Kluwer 2009) 153-154.

4 Magdalena Tabernacka, 'Etnocentryzm w obszarze działania władz publicznych' [Ethnocentrism in the area of public authorities activity] in Artur Preisner (ed), Czy istnieje uniwersalny standard praw człowieka? Kulturowe i cywilizacyjne uwarunkowania statusu jednostki [Is there a universal standard of human rights? Cultural and civilizational conditioning of the status of an individual] (2013) 3 Zeszyty Luksemburskie 281.

5 For example, the education system in Germany and Poland has been and is being shaped in specific social, demographic and economic conditions. Geographical conditons are also not without significance. This combination of factors influences such specific issues as, e.g., school holidays, whose temporal distribution is substantially different in the two countries. There is no autumn break in Poland, but it "naturally" emerged in Germany or Italy because of the need for children to be involved in field labor at that time. In Poland such practices were no longer in place after the partitions and significant transformations of the state. Institutions, procedures and ways of acting needed unification and the entire state was "re-established" without preserving local customs and practices that were different in different parts of the country.

and one's understanding the fact that members of other cultures have different cultural filters with each culture holding a strong belief that its version of reality is the true and correct one. The authors also emphasise that flexible ethnocentrism does not mean one's acceptance of a newly explored perspective. It means understanding the new[6].

Evaluation seems unavoidable in multicultural studies. And, bearing in mind a complex history and practicalities of mutual interdependence, it is essential for Polish and German relationships. Multicultural studies are also profoundly influenced by the phenomenon known as attributive asymmetry, which equally affects the research on public administration in Germany and Poland. Paweł Boski notes that the essence of scholarly thinking (reasoning) is explaining and predicting observed (or discovered) phenomena. And this is the background against which he analyses the subjective assessment of success and failure. In accordance with the effect of attributive asymmetry abilities and effort are the two main causative categories explaining one's success, but their importance declines if one evaluates one's failure. If one's failure follows someone else's success it will not be attributed to these features to the same rather high degree. Interestingly, a third party's success following our own triumph is explained by lack of ability and effort on the part of such people. It appears that one's success may become set off by an interpretation of a third party's failure in way that is favourable to I whilst one's failure can be interpreted to reduce the success of other people[7].

The research on the functioning of the administration in Poland and Germany and its effects has to account for these important interdependencies. The reason being, that the scope of studies on the two systems is defined by the common goals of the single Europe and the pragmatic communality and interdependence of the neighbourship.

Interdependence and a common goal fall into the category of the conditions of the effective contact so called by Aronson, Wilson and Akert. They further assign equal status, informal interpersonal contacts, multiple contacts with

6 David Matsumoto, Linda Juang, Psychologia międzykulturowa [Culture and Psychology: People Around the World] (Gdańskie Wydawnictwo Psychologiczne 2007) 90-91.

7 Paweł Boski, Kulturowe ramy zachowań społecznych. Podręcznik psychologii międzykulturowej [Cultural framework of social behavior. Handbook of Intercultural Psychology] (Wydawnictwo Naukowe PWN, Academica Wydawnictwo SWPS 2009) 296.

members of an alien group and social norms of equality to this category[8]. It is worthwhile emphasising certain specific determinants which influence the relationship between the states and their administrations and the inhabitants and citizens of Poland and Germany. The research should, on the one hand, tackle all measurable facts which, for example, can be expressed in economic and quantifiable categories and on the other, it should give account of subjective social conditions, including the social perception of certain phenomena. Administration is an activity of the people employed by the state's structures for the benefit of the people who create the state. This is the context which makes Marion von Dönhoff's words sound very relevant and adequate when she writes that the course of history is determined by how people subjectively imagine facts rather than objective facts themselves.[9] There are certain phenomena in the life of the society and the functioning of institutions which meet the criteria of such determinants in particular for the functioning of the administration in the two countries. Therefore they should become a subject of the currently conducted research and future updates. They should also be included in the background studies for the research on certain detailed topics which I will list in the subsequent sections of this paper.

One of specific phenomena which is described in literature and calls for an in-depth study is the so called asymmetry between the economic system, the social systems and the administration systems of the two states. A multifaceted analysis of this phenomenon has been completed by Kazimierz Wóycicki and Waldemar Czachór. According to these authors the actual proportions are not as clear as is generally believed in such areas as the level of education seen as the country's potential and the economic growth, allowing for the obvious fact that Germany is a much wealthier country. The authors believe that the notion of asymmetry should not be ignored. Nonetheless it should not be overemphasised. As one invokes and allows for asymmetry in one's work one should measure real proportions rather than apply stereotypes[10]. Asymmetry shares much in common with the ethnocentric approach to the Polish and German problems. Importantly, it may determine

8 Elliot Aronson, Timothy D. Wilson, Robin M. Akert, Psychologia społeczna [Social Psychology] (Zysk i S-ka 2006) 380.

9 Marion von Dönhoff, 'Europejski dom' [European Home] in Alice Schwarzer, Marion Dönhoff. Życie pod prąd (Wydawnictwo książkowe Twój Styl 1999) 158.

10 Kazimierz Wóycicki, Waldemar Czachór, Jak rozmawiać z Niemcami? O trudnościach dialogu polsko-niemieckiego i jego europejskim wyzwaniu [How to talk with German. About Polish-German dialogue and its European Challenge] (Oficyna Wydawnicza Atut 2009) 31-38.

any assessment or evaluation of a situation by Polish scholars as much as German ones. And there is a clear connection with the stereotypes adopted on both sides of the border. The ethnocentrism of the academia on both sides of the border may only be overcome through the knowledge about the popular and stereotypes which are cultivated by academia itself as opposed to the reality.

Hence a capital meaning of all research and studies which involve the confronting of positive as much as negative stereotypes with the objective information and the identifying of the stereotype perceptions of Poles by Germans and Germans by Poles and other issues which are of a key importance for the cross-border exchange. The "Barometr Polska Niemcy" – "Poland-Germany Barometer" is an example of this type of project [11]. The most recent edition of the project provides a range of opinions which seem influential for the perception of the Polish and German problems by scholarly circles and are instrumental for the functioning of the administration in the mutual contacts. The published report shows that more or less a half of the population surveyed in both countries have neutral associations with the neighbouring country. Furthermore, Poles see the situation in Germany in a very positive way. They preserve an especially good view of the German economy but good work organisation has suffered a setback (9 per cent points) as much as a belief in the good development of the German economy (8 per cent points). Meanwhile the proportion of those who can see corruption and bureaucracy in Germany has grown (9 per cent points in either case), which, according to the author of the report, may echo the immigration crisis, the impact of the political elite's opinions in Poland and the "disenchanting" of Germany due to an improved situation in Poland. Nonetheless, Poles appreciate the work organisation and a return of capital on an investment in Germany. Germans reciprocate this with a positive view of the economic growth in Poland (in fact this score has dropped by 4 per cent points since 2013) and appreciate Poland as a tourist destination. At the same time their belief that Poland suffers from corruption and the country's bureaucracy hinders business dealings. Germans have a negative view of the work organisation and media freedom in Poland. Public opinion in Germany has responded to the recent developments in Poland; opinion has become less

11 These studies are the result of cooperation between the Institute of Public Affairs and the Konrad Adenauer Foundation. The aim of this project is to systematically study and present the opinions of Poles and Germans on Polish-German relations and the challenges that these countries are facing.

favourable as regards: the freedom of the media in the criticism of the national government (17 per cent points), respecting civil freedoms (12 per cent points), respecting the rights of national and ethnic minorities (8 per cent points) and the functioning of parliamentary democracy (13 per cent points). What prevails when Poles evaluate Germany is a good opinion of the democratic system of government, respecting civil liberties and respecting the rights of national minorities. The appreciation and liking taken by Poles to Germans has been much stronger than the reciprocal feelings on the German part. In 2016, 53 % Poles declared that they liked Germans with 28 % Germans reciprocating the same attitude. Poles were seen in a hostile way by 36% Germans with 14 % Poles declaring a negative view of Germans[12]. These results are of key importance both for the functioning of administration and for motivating scholars and their developing their opinions. Every human activity should always allow for human nature, part of which is also emotions. Todd D. Nelson refers to rather obvious fact that intergroup interactions comprise an emotional component. Emotions lead to distortions and errors in information processing and enhance the observer's inclination to use stereotypes during the processing of the information about the member of the alien group in the group context[13].

The above described asymmetry in the evaluations provided by Poles and Germans and the mutual stereotyping are to some extent related with a phenomenon present on the German side. This phenomenon has been identified by Kazimierz Wóycicki and Waldemar Czachór and seems rather instrumental for Polish and German liaisons and research. The two authors have defined it as the deficit of respect or a certain under-appreciation of the nature of Polish efforts and endeavours to reach the current point in its political, economic and social development over the last few decades. The authors believe that respecting one's partner means learning from the partner and a willingness to engage into multifaceted collaboration, which does not exclude an eventuality of conflict[14]. This is not merely about Polish and German relations but the German West-bound orientation (except for the

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12 Agnieszka Łada in cooperation with Jacek Kucharczyk and Gabrielle Schöler, Barometr Polska – Niemcy 2016. Polacy i Niemcy o sobie nawzajem 25 lat po podpisaniu traktatu o dobrym sąsiedztwie i przyjaznej współpracy [The Barometer Poland-German. Poles and Germans about each other 25 years after sign Treaty on the good Neighbourhood and Friendly Cooperation'].
See: http://www.isp.org.pl/barometr2016/pl/Barometr_2016_pl.pdf

13 Todd D. Nelson, Psychologia uprzedzeń [Psychology of Prejudice] (Gdańskie Wydawnictwo Psychologiczne 2003) 96.

14 Wóycicki, Czachór (n 10) 55.

special relationship with Russia), which was noted by Marion von Dönhoff when she wrote of the old conviction that lingered between 1920s and 1960s among German elites who believed that the culture existed in the West only. The author wrote that the world as seen by Germans of the day was identical with the West. This was the place where Germans were capable of engaging in politics with panache, rouse their imagination to integrate and reconcile with old enemies. But this world would end at the iron curtain[15]. The German policy towards the East and Poland has radically changed since that era. A fading trait of this orientation has remained until today. It is still discernible even in the Barometer report and is, in particular, revealed in the survey of the German appreciation and liking to the inhabitants of the different European countries[16].

The special Polish and German cultural context of the public administration studies should allow for a broad spectrum of cultural interdependencies rather than a single isolated problem reduced to a range of specific recent stereotypes. All fields where culture affects human perception must be considered. This is a treatment and observations offered by Sławomir J. Magala in his a model of cross-culture competences. As part of the tasks for academia the author has designed his model to comprise decoding and comparing cognitive, relative and emotional codes[17]. These are certainly platforms where culture affects social relationships and the functioning of individuals, which also concerns public administration staff. Consequently, the Polish and German studies on public administration cannot fail to ignore any factors which determine the mutual liaisons from the communication angle or affect the mutual perception and evaluation inclusive of the emotional sphere. Kazimierz Wóycicki and Waldemar Czachór quote quite a compelling example that skilfully illustrates the situation: it is a Polish custom that when you strike up a conversation you begin with a routine banter about your own weaknesses. Your partner in conversation is expected to respond with the same self criticism. The authors note that when the other party is German, who has just heard a Pole highlighting his or her vices, there is no chance for self-ridicule from the German side. He or she will just comfort the Pole with a perspective of fighting such imperfections of one's character. The result is that

15 Marion von Dönhoff, 'Nie mamy polityki wschodniej' [We don't have the East Politics] in Schwarzer (n 9) 190.

16 Łada (n 12) 24-25.

17 Sławomir J. Magala, Kompetencje międzykulturowe [Cross-Cultural Competence] (Wolters Kluwer 2011) 55.

Poles generally consider Germans bores with no sense of humour or arrogant people[18].

The research on Polish and German administration should also account for the cross-border areas in both countries and tackle its special aspects: business, societal issues, demographics and structural problems. Kazimierz Wóycicki and Waldemar Czachór emphasise such topics as a need for business stimulation and incentives of the cross-border territories with a stress on the economically disadvantaged areas on the German side[19], which gives the Polish partner a slight edge over the German one. However, the ultimate result would be to mutual benefit. The authors emphasise a range of problems relating to the operation of administrative bodies including, but not limited to, slimming down the bureaucracy required by German entrepreneurs launching their businesses in Poland and the xenophobic bureaucracy that appears to be ignorant of the special Polish and German coexistence in Germany; training and education of local authorities and the "regional foreign policy"[20].

The Barometer shows a rather positive trend both in terms of the bilateral relations in the future and the so called climate for academic research, namely the residents of the eastern *Länder* see the Polish and German relations in a more positive light than those who live in western *Länder*. The people from the eastern states will also more often advocate collaboration with Poland that the inhabitants of the western states[21]. Frequent mutual contact helps to break negative stereotypes. Therefore this positive attitude of the German communities living in the East of Germany may bear fruit by creating a form of sustainable Polish and German relations of scale. The need for administration studies is not limited to the systems operated in eastern *Länder* although the situation on the frontier is always crucial for all bilateral contacts both at the local level and on the national scale in the context of the overall public administration systems.

18 Wóycicki, Czachór (n 10) 118.

19 This pertains in particular to a phenomenon referred to as the merger of the West German tenency for overregulation and learned helplessness, which, in the context of the postsocialist history of the region, is called "ostdeutsche Wirtschaft " on analogy to a still lingering cliched term "polnische Wirtschaft".

20 Wóycicki, Czachór (n 10) 93-100.

21 Łada (n 12) 43, 54.

The current status of the studies on Polish and German administration is a result of an impressive and highly commendable effort that has been made in the field of social science for several decades now.

The work has involved a broad spectrum of historical developments, practical liaisons, mutual interdependences, conditions and a multifaceted social dialogue between Poland and Germany. Those were decades of commitment with the aim of understanding the essence of the coexistence of Germans and Poles in Europe and forming its axiological and legal foundations. The work on the extended sphere of Polish and German relations and contributions from such personalities as Stanisław Stomma, Władysław Bartoszewski, Marion von Dönhoff brought forwards the status of the research on the functioning of administration. The phase of searching for ways to start a dialogue is part of the past. The studies are currently conducted in a common context. The shared research platform is the communality and community of goals. This is a fact and it calls for description and findings to ensure the compatibility and efficiency of the operation of pubic administrative structures and procedures which facilitate the functioning of administration.

The studies on Polish and German administration should focus on those organisational and functional aspects which are instrumental for the necessary collaboration between the administration bodies and where one party responds to the activities of the other. There are a number of areas of competence allocated to public administration bodies, e.g. family matters – inclusive of an opportunity for mediations. This field of scholarly studies should allow for child custody and an analysis of the bodies responsible for family support in terms of bringing up and educating children and providing for foster care. There is also a broad and important area of environmental protection as a task for administration bodies on both sides of the border. The research should offer them a proposal of a system and operating methods. The collaboration between the police forces, fire departments and other services are another example of research opportunities as all of them are legally bound to respond to emergencies and disasters in a way that is significant for the communities both in Poland and Germany.

As part of Polish and German academic efforts there should be room for teaching programmes on the national systems of law and public administration, the mechanisms of communication among the units in the public administration structures, special aspects and etiquettes used for the purpose of customer contacts or a wide-scale public administration targets or

service recipients. All research and studies should be conducted in the "cross-border" perspective and on the restricted scale with a single, Polish or German, administration and legal system in focus. Nonetheless, such studies must not ignore any important spheres between the two systems where one system may react in response to the activities or operation of the other and result in certain consequences also as part of the cross-border contacts.

All academic research should allow for the perspective of a rolling horizon. There are no fixed and permanent relationships in the social sphere. And both public administration and the scholars concerned with it should be prepared to accept this device. Once established, all may become irrelevant if a situation changes as a result of any earlier developments. This is a never ending story. In the case of the Polish and German studies on public administration, the fixed points are the facts of the neighbourhood and the resulting social contacts in certain political, demographic and economic circumstances. What is important is that in the situation of the inevitable cultural differences, the administrations of the two countries have been taking steps in the sphere of human needs which do not appear to be of a different nature. The only difference lies in the methods of operation and cooperation dictated by the different circumstances. This is the condition that triggers the continuity of research in the common Polish and German perspective.

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SELECTED ISSUES CONCERNING PUBLIC TASKS OF THE COMMUNES IN POLAND AND GERMANY

1 INTRODUCTION

The Republic of Poland is an example of a unitary decentralized state with a characteristic inner unity and well-developed structures of territorial self-government[1]. The unitary system adopted by the country is a consequence of the homogenous character of Polish society in terms of nationality, culture and religion[2]. Public governance in Poland operates on the basic principle of decentralization. This is literally expressed in art 15 of the Constitution of the Republic of Poland of April 2, 1997 which claims that *The territorial system of the Republic of Poland shall ensure the decentralization of public power*, while art 16 of the Constitution affirms that *Local government shall participate in the exercise of public power. The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility*[3]. The most significant legal act regulating the institutional and legal situation of the commune in Poland is the Act of March 8, 1990 on commune territorial self-government[4].

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1 Paweł Machalski, Europa samorządna. Samorząd terytorialny w wybranych państwach Unii Europejskiej (Wydawnictwo Adam Marszałek 2015) 38.

2 Piotr Winczorek, Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Liber 2000) 15.

3 The Constitution of the Republic of Poland of 2 April 1997 Dziennik Ustaw – Official Journal of Laws of the Republic of Poland (hereinafter: Dz. U.) 1997 No 78, item 483, < http://www.sejm.gov.pl/prawo/konst/angielski/konse.htm > accessed 15 December 2017.

4 Dz. U. 2016, No 446, item 1579.

The Federal Republic of Germany is a federal political order. The country comprises member units known as federal states or *Länder* (16 federal states including 3 cities are awarded the status of *Land*: Brema (with Bremerhaven) Hamburg and Berlin) which individually enjoy a high degree of autonomy[5]. Germany has a four-tier territorial structure – the federation, *Länder, i.e.* federal states, counties and local administration units – communes and municipalities, while the territorial self-government operates on two tiers – communes and municipalities and counties (except for Bavaria where an additional territorial unit (*Bezirk*) is included)[6]. It should be noted that there are a few exceptions where the administrative structure in the federal states is a two tiers, *e.g.* Berlin is subdivided into districts and neighbourhoods (*Ortsteile*).

According to The Basic Law of the Federal Republic of Germany, the *Länder* shall have the right to legislate insofar as this Basic Law does not confer legislative power on the Federation. The division of authority between the federal states and the *Länder* shall be governed by the provisions of this Basic Law concerning exclusive and concurrent legislative powers[7]. In the process of developing the structure of territorial self-government each *Land* individually followed the organisational scheme of its choice. The systems are anchored in four historical models: the south German system of councils, the system of mayors, the system of magistrates and the north German system of local councils[8].

Despite the fact that the self-government structures in Poland and Germany significantly differ, the commune, as a unit delivering public tasks on a large scale, plays an equally essential role in both countries.

2 THE LEGAL AND INSTITUTIONAL POSITION OF THE COMMUNE IN POLAND AND GERMANY

It should be noted that, as an element of territorial self-government, the commune in Poland does not belong to the structure of national government[9]. However, the commune and the state must not be juxtaposed. In contrast, in Germany the communes belong to the federal states level. The source of the

5 Machalski (n 1) 39.
6 ibid 90.
7 Rafał Stasikowski, Gwarancje samorządności gminnej w systemie prawnym Republiki Federalnej Niemiec i Rzeczypospolitej Polskiej (Oficyna Wydawnicza Branta 2005) 22.
8 ibid 26.
9 Zygmunt Niewiadomski, 'Kierunki rozwoju samorządu terytorialnego' 1991 (1-2) Samorząd Terytorialny 83.

power of the territorial self-government and its legitimacy finds its expression in the will of the state and it is the democratic state that, by law, defines the wide scope of the autonomy and independence claimed by the territorial self-government[10].

This autonomy of Polish and German communes in particular manifests itself in the status of a legal person which enables them to enter into legal relationships with public authorities, hold and manage their own assets, participate in economic turnover and incur liabilities[11]. The fundamental pillars on which this autonomy rests are the commune's power to make local laws, its organisational and personal competencies and a financial and taxation control.

The word "commune" would originally refer to a community of a national character. Its existence was based on the natural law of communities to decide about their own affairs. During the interwar period, such an approach was contested and certain authoritarian institutional changes were introduced which led to the abolishing of the separation of powers in the state[12]. In Poland, the commune, as a unit of territorial selfgovernment, was reinstated in 1990. The breakthrough in the process of shaping this administrative unit in Poland took place on January 1, 1999 on enacting the Commune Self-Government Act of July 24, 1998, which introduced the fundamental three-level territorial division of the state[13]. Accordingly, a new system of three-tier territory division into *gmina* (commune), *powiat* (county) and *województwo* (voivodship) was adopted.

The term of commune was defined in the aforementioned act on territorial self-government, where the legislator characterized the commune as a corporate body personally formed by a community of residents. W. Kisiel also emphasizes the origin of commune, its democratic internal organization and its purpose which is to constitute an essential part of the public administration at the local level and exercise its competences within this framework[14].

10 Renata Kusiak-Winter, Współpraca transgraniczna gmin Polski i Niemiec. Studium administracyjnoprawne (Prawnicza i Ekonomiczna Biblioteka Cyfrowa 2011) 99.

11 Zbigniew Leoński, Samorząd terytorialny w RP (C.H. Beck 2010) 8.

12 Jan Boć, Prawo administracyjne (Kolonia Limited 2010) 184.

13 Dz. U. 1998, No 96, item 603.

14 Wiesław Kisiel, 'Wstęp' in Paweł Chmielnicki (ed), 'Ustawa o samorządzie gminnym. Komentarz' (LexisNexis 2010) 22.

The Constitution of the Republic of Poland states that the commune is the basic unit of local government. The legislator makes a presupposition with regard to the competences of this unit by saying that *The commune shall perform all tasks of local government not reserved to other units of local government*[15].

In Poland, the commune is endowed with a legal personality, which means that it has not only a public and legal subjectivity but also that it is warranted the autonomy of operation. There are two types of communes – rural and urban. The distinction has a formal character and relates to the names of commune bodies – commune council and city council[16].

Article 169 of the Constitution of the Republic of Poland provides for the traditional division of the bodies of territorial self-government into statutory and executive. The duality of the commune bodies is also reflected by the Commune Act where the council is identified as the decision making body (art 18 sec 1), while the voyt (mayor or president) acts as the executive body (art 26 sec 1)[17]. The commune council is appointed in universal, equal, direct and secret elections. The council acts for the commune as its statutory and controlling body. It decides on its internal organization by passing the statute of the commune. The commune council sits in sessions and while in session it may set up committees. Like German committees, they have a subsidiary rather than mandatory role[18].

The single-member executive body of the commune – voyt, mayor or president – is elected on the basis of universal, free, equal, direct and secret suffrage[19]. This function is responsible for the enforcement of the council's resolutions and its external representation. A voyt, mayor or president performs his or her duties assisted and supported by the commune office.

It is worth remarking that the subject of each territorial selfgovernment unit is the community that lives in a commune, which means that the inhabitants are

15 Bogdan Dolnicki, Samorząd terytorialny (Wolters Kluwer SA 2016) 77.
16 ibid 94.
17 Renata Kusiak, 'Pozycja gminy w strukturze państwa polskiego i niemieckiego', Acta Universitatis Wratislaviensis No 1900, Prawo CCLIII, 76.
18 Dolnicki (n 15) 96.
19 Hubert Izdebski, Samorząd terytorialny. Podstawy ustroju i działalności (LexisNexis 2014) 252.

not only Polish citizens but also foreigners granted permanent residence in the area of that commune[20].

A German commune is a territorial corporation of citizens. Its autonomy is based on administrative and territorial autonomy, organizational competence, local legislative power, autonomy in the scope of the relationships with the territorial self-government, financial autonomy and autonomy in the scope of economic development and urban planning[21]. It must be emphasized that each of the aforementioned expressions of autonomy must conform to domestic law.

In Germany, communes are part of the *Land* administration and according to the scope of their competence they act autonomously in dealing with, and assuming responsibility for, all matters regarding local communities[22]. This rule is made explicit in the Constitution of the Federal Republic of Germany of May 23, 1949, where art 28 sec 2 stipulates that *Municipalities must be guaranteed the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws. Within the limits of their functions designated by a law, associations of municipalities shall also have the right of self-government according to the laws. The guarantee of self-government shall extend to the bases of financial autonomy*[23].

Endowed with legal personality, the commune in Germany constitutes the self-government of public administration. Nonetheless, it is subordinate legislation (statutory instruments/orders, rules, regulations) that determines the system and the tasks of the commune in detail. It is important to bear in mind that only a few problems have found harmonised solutions across the whole German federation. The most important one is the commune's capacity to elect its representative collective body (with names differing from *Land* to *Land* i.a. commune council, city council, commune representative) to exercise the

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20 Jerzy Korczak, Piotr Lisowski, Adam Ostapski, Ustrój samorządu terytorialnego. Materiały dydaktyczne (Prawnicza i Ekonomiczna Biblioteka Cyfrowa 2015) 55.

21 Jerzy Korczak, 'W Niemczech' in Jan Jeżewski (ed), Samorząd terytorialny i administracja w wybranych krajach. Gmina w państwach Europy Zachodniej (Wydawnictwo Uniwersytetu Wrocławskiego 1999) 273.

22 Marcin Miemiec, Gmina w systemie administracji publicznej Republiki Federalnej Niemiec (Kolonia Limited 2007) 40.

23 Basic Law for the Federal Republic of Germany of 23 May 1949, Bundesgesetzblatt (BGB1) I, 1949. https://www.bundestag.de/blob/284870/ce0d03414872b427e57fccb703634dcd/basic_law-data.pdf accessed 21 December 2016.

legislative power within its jurisdiction to the extent that such powers are not reserved for other bodies.

The powers and responsibilities of the commune council include passing local laws, carrying out commune territorial transformations, determining rates of public levies or tariffs and controls[24]. Due to a collective and session-based mode of operation followed by the commune, these rights are largely implemented by the council's committees which play both advisory and decision-making roles[25].

The bodies of the German commune are elected by universal, free, equal and secret suffrage[26]. A commune resident is, in accordance to the German legislation, anyone who has his or her place of residence there. The passive voting right and the active voting right are enjoyed only by those residents of communes who hold either German citizenship or the citizenship of another EU member state and have lived as residents of the commune for at least 3 months (or, in some Länder - 6 months)[27].

The executive body of the German commune takes either the monocratic form of the mayor (*Bürgermeister*) or the lord mayor (*Oberbürgermeister*), as the case may be, or the collective form of the commune management board (an executive committee) known as the magistrate[28]. The actual form depends on the locally binding model of selfgovernment, i.e. North German, South German, the magistrate or the mayor[29]. According to R. Kusiak-Winter, the above mentioned division is currently of no significance due to the reforms conducted in the 1990s when a wide-ranging harmonization of the legal solutions, in particular, with regard to the federal states, took place. As a result of the reform, the differences have narrowed down to the length of the mayor's term in office, the removal or dismissal of the mayor by the council and the division of competencies between the council and the mayor[30].

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24 Miemiec (n 22) 53.

25 Korczak (n 21) 276.

26 Lidia Zacharko (ed), Model ustroju samorządu gminnego w wybranych krajach europejskich (Difin 2013) 94.

27 Joanna Jagoda, 'Organizacja samorządu terytorialnego w Niemczech' in Marta Woźniak, Joanna Ryszka (eds), 'Prawno administracyjne regulacje samorządności i zarządzania państwem w Unii Europejskiej' (Wydawnictwo Uniwersytetu Opolskiego 2006) 210.

28 Zacharko (n 26) 93.

29 Miemiec (n 22) 53, see: Korczak (n 21) 282.

30 Kusiak-Winter (n 10) 104.

Both in Poland and Germany, the commune plays its fundamental roles – being close to the citizen, it connects and integrates him with the country, provides for autonomy, guarantees safety and the sense of belonging to the community, ensures a better understanding and appreciation of the needs and problems of local residents. Furthermore, it is best positioned to utilise its potential of adequate and quick response[31]. What influences/shapes/defines the key role of the commune as a subject/entity charged with public tasks is the scope of these public tasks.

3 CARRYING OUT PUBLIC TASKS THE COMMUNES IN POLAND AND GERMANY

Fulfilling the public tasks by the units of territorial self-governments both in Poland and Germany is connected with the principle of subsidiarity, in accordance to which decisions should be taken at the level that is closest to the residents of a territorial community if such a decision is expected to be most successful at this level[32].

The German model of public tasks performed by the community is not uniform. It differs from Land to Land between a monistic concept and a dualistic one. In addition to a range of tasks fulfilled in their selfgovernment capacity, the communes carry out either delegated (mandated) or obligatory tasks. The former if they operate under the dualistic model and the latter if they follow the monistic concept, in which case conformity with the guidelines is required[33]. The delegated (mandated) tasks are transferred to the communes by the state on the basis of national legislation and executed subject to the guidelines. In accordance with the monistic model, the guidelines follow from the laws which provide for the transfer of the tasks. Such guidelines must however be general. They should not step into the executive sphere in any exaggerated manner, especially as regards personnel, devices or means selected on their own[34].

Irrespective of the above classification, the tasks are divided into voluntary and obligatory. They are carried out by each commune autonomously on its own

31 ibid 10.
32 Dolnicki (n 15) 355.
33 Miemiec (n 22) 79.
34 ibid 80.

responsibility[35]. As regards voluntary tasks, the commune uses the presumption of competence and makes an autonomous decision of whether or not it wishes to accept them and as to how it will perform them. The commune performs all tasks explicitly delegated to it in accordance with the legislation. It may, however, apply the presumption of competence to independently determine and perform new public tasks[36]. There are, however, certain conditions attached as new tasks are decided. They must fall within the category of local community issues and they must not be reserved for the competences of other public authorities. What is also important is that the commune must be able to secure adequate means and measures to ensure their successful completion[37]. The implementation of voluntary tasks is always regulated in the spirit of a local legal act that is passed on the basis of the general authority granted by virtue of the commune ordinance, but when a local legal act interferes in the sphere of the principal constitutional rights of the recipients of such a task, special authorization is required[38].

The obligatory tasks of self-government performed by the commune on the basis of the legislation include: welfare, primary education, youth services, road construction and maintenance, water supply, sewage and wastewater treatment and collection, establishing and maintaining cemeteries and firefighting and fire protection[39]. As part of its voluntary tasks the commune may establish, operate and maintain orphanages, nursing homes, hospitals, sports and leisure facilities, libraries or public corporations. The commune is also commissioned to execute certain tasks assigned to the state administration, which i.a. comprise civil first response organizations, issuing passports, supervising health care, building control, industrial inspection and registration of vital records[40]. As noted by J. Korczak, in case of any obstacles preventing the fulfilment of a task by the commune e.g. such as a financial predicament and/or staff shortages, the common practice is to enter into cooperation with other communes and transfer

35 Eugeniusz Ruśkowski, Bogdan Dolnicki (eds), 'Władza i finanse lokalne w Polsce i krajach ościennych', (Oficyna Wydawnicza Branta 2007) 56.

36 Ewa Olejniczak-Szałowska, 'Zadania własne i zlecone samorządu terytorialnego' (2000) 12 Samorząd Terytorialny 12-13.

37 Carlo Panara, Michael R. Varney (eds), Local Government in Europe: The 'Fourth. Level' in the EU Multi-Layered system of governance (Routledge 2013) 89.

38 Stasikowski (n 7) 108.

39 Marek Stefaniuk, Jan Szreniawski, 'Główne reformy administracyjne w Polsce w latach 1989-2009' in Jerzy Supernat (ed) Między tradycją a przyszłością w nauce prawa administracyjnego. Księga jubileuszowa dedykowana profesorowi Janowi Bociowi (Wydawnictwo Uniwersytetu Wrocławskiego 2009) 146.

40 Korczak (n 21) 287.

the performance of such a task onto the self-government supra municipal institutions (e.g. vital records registration tasks)[41].

The commune also engages in elective tasks and makes an independent decision on taking up a particular task. As indicated by A. Błaś, such tasks are the most complete expression of the commune's autonomy, not to be confused with arbitrariness. In resolving the question of whether to proceed or not with a particular voluntary task, communes are required to test each case for compliance with the constitutionally protected values and norms[42]. It is worth paying attention to the issue of optional tasks – if the commune fails to fulfil an optional task, it has to be accomplished by the county.

In the Constitution of the Republic of Poland, Polish legislators use the classic division of tasks allocated to the territorial self-government into self-government's own tasks and mandated tasks. In determining the scope of commune tasks, the Commune Self-government Act provides for a general treatment on the presumption that the commune's ownership of all public cases of any local significance must not be reserved in favour of other entities[43]. The purpose of the commune's own tasks is to meet the collective needs of the community. On the other hand, the commune fulfils some tasks which belong to the state administration and are commissioned to the commune for execution. Commissioned tasks must result from the justified needs of the state. Both own and mandated tasks have their origin in the relevant piece of legislative provision[44]. The commune's own tasks include meeting the community needs concerning i.a. the issues of local road transport, the municipal water distribution network and the sanitary drainage network, welfare, public education, culture, healthcare, libraries, family support services, the commune cemeteries, public order, pro-family politics, commune promotional activities, cooperation with nongovernmental organizations, law and order. The commune's own tasks are divided into two categories: obligatory and voluntary[45].

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41 ibid 288.

42 Adam Błaś 'Zadania administracji publicznej' in Adam Błaś, Jan Boć, Jan Jeżewski (eds), Administracja publiczna (Kolonia Limited 2004) 140.

43 Dolnicki (n 15) 78.

44 Michał Kulesza, Dawid Sześciło, 'Local Government in Poland' in Angel-Manuel Moreno (ed), Local government in the Member States of the European Union: a comparative legal perspective (National Institute of Public Administration 2012) 490.

45 Marcin Miemiec 'Działalność gospodarcza gmin w Republice Federalnej Niemiec', in Adam Błaś, Konrad Nowacki (eds) Współczesne europejskie problemy prawa administracyjnego i

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All tasks commissioned to the commune are those which by principle belong to the state administration and are transferred to be executed by territorial self-governments[46]. This can be done either, by statutes where a law exists that instructs the commune to accept a task, or by an agreement whereby the commune's body may, at its discretion, enter into an agreement with the state administration. In all cases, however, there is a condition; namely the guarantee given by the state administration that adequate funding will be available to successfully complete the task[47].

4 CONCLUSION

To conclude; the situation of the commune as the basic unit of territorial self-government is similar both in Poland and Germany. It is clearly visible that Polish legislators derived from German patterns while positioning of the commune in the system. The similarity appears especially in the fact that the commune is in both countries a council – a representative body directly elected by the citizens. Both in Poland and the majority of the federal states, the commune's executive body is a monocratic body appointed by the process of direct election[48].

In both cases the territorial self-government is comprised of the community inhabiting a particular area and organized as a territorial selfgovernment association empowered by the state as a legal person in order to carry out its activities[49]. It executes certain tasks of the state by deployment (decentralization).

Both in Poland and Germany, communes fulfil two kinds of activities – own (obligatory) and delegated. In Poland, the qualifying of the activity as own or delegated is conducted on the basis of the analysis of every task in reference to the material law. It is similar in Germany, where the ordered activities conducted by the commune must result from the acts. The commune's obligatory tasks in regard to Polish and German regulations are realized on their own behalf and as the own responsibility of the commune; however their financing is completed from the commune's budget. In both countries, the further division of own

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administracji publicznej. W 35. rocznicę utworzenia Instytutu Nauk Administracyjnych Uniwersytetu Wrocławskiego (Wydawnictwo Uniwersytetu Wrocławskiego 2005) 294.

46 Kusiak-Winter (n 10) 118.

47 Dolnicki (n 15) 358.

48 Jagoda (n 27) 219.

49 Zygmunt Niewiadomski, Samorząd terytorialny w Europie Zachodniej. Podstawowe założenia i modele (Fundacja Rozwoju Demokracji Lokalnej 1990) 11.

activities into obligatory and voluntary was applied, however in neither case was the closed catalogue of commune own activities indicated, making the activities dependant on the needs of the particular society. In spite of this the Polish legislator, in article 7 of commune territorial self-government, indicates the catalogue of commune's own activities, but it is not comprehensive. The German legislator made the inclusion of the particular task into the group of local society issues dependant on the specific conditions of every commune. The nature of optional activities of communes is similar in both countries (it includes i.a. the issues concerning theatres, museums, building sport facilities) and is dependent on the financial condition of commune[50].

In Poland, the delegated tasks are those public activities fulfilled by communes imposed by law and resulting from the justified needs of the country. The similar solution is applied by the German legislator. Both Polish and German communes have the determined scope of independence in fulfilling the delegated activity – in both cases, the ordering party transfers the appropriate financial means for the commune being necessary to realize the particular activity.

The main areas of public tasks of Polish and German communes include shaping the structure, asset management, tax enforcement and collection, basic public education, health care and welfare, local public transportation, cultural and sports facilities, planning and urban planning. On the basis of aforementioned statement, it is clearly visible that Polish and German communes, as units being the closest from the territorial government for the society, fulfill the most important public activities and despite some differences resulting from the state's regulations, they have really much in common.

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ADMINISTRATIVE SPECIALIST STAFF IN SAXONY – TOPICAL CHALLENGES AT THE EXAMPLE OF THE MEISSEN UNIVERSITY OF APPLIED ADMINISTRATIVE SCIENCES

1 INTRODUCTION

This text is an elaborated transcript of a presentation given at the symposium "Current research problems in Administrative Studies in Germany and Poland", held at the University of Wrocław, October 21st–22nd 2016. It highlights the demographic challenges in the administrative sector for the Freestate of Saxony, measures taken at Meissen University of Applied Administrative Sciences, as well as possible strategies of the Freestate of Saxony regarding the public sector to meet the challenges of the coming decades[1].

2 OUTLINE OF THE CHALLENGE

The Saxon universities play a prominent role in offering and realising solutions for the demographic challenges the Freestate of Saxony faces. Currently, there are 14 universities and universities of applied sciences with different specialisations (see fig. 1).

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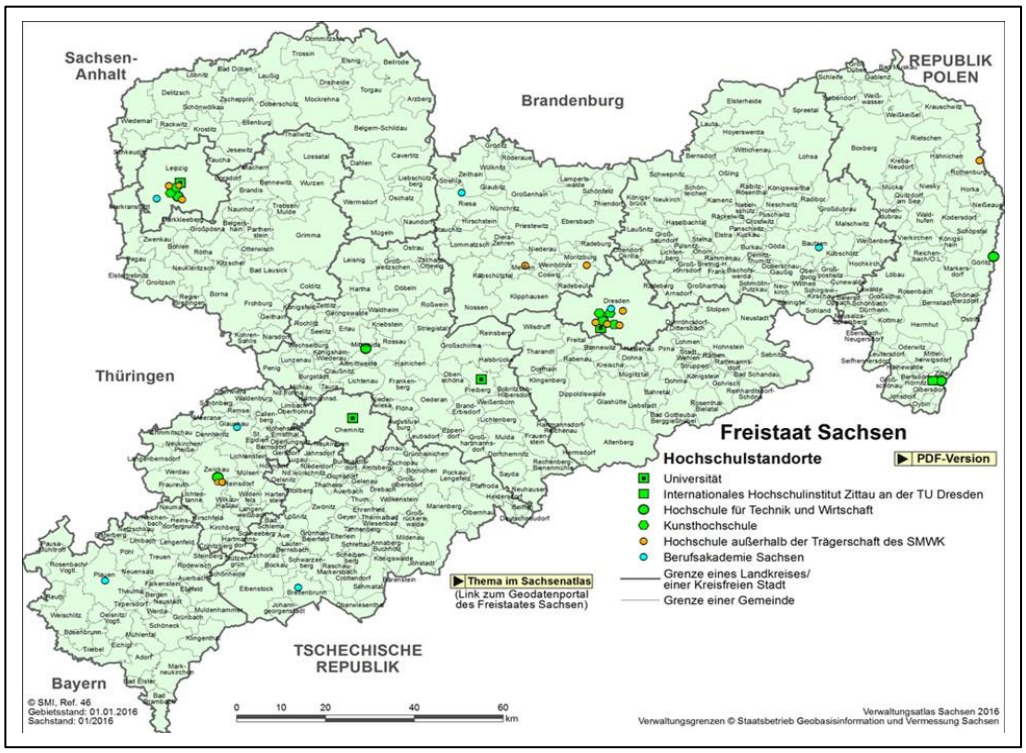
1 Final report of the personnel-commission ("Kommission zur umfassenden Evaluation der Aufgaben, Personal- und Sachausstattung"), imposed by the Saxonian Government, 2016.



Source: http://www.verwaltungsatlas.sachsen.de/img/img_verwaltungsatlas/Verwaltungsatl as/hochschule.gif

Fig. 1 Location of universities in the Freestate of Saxony

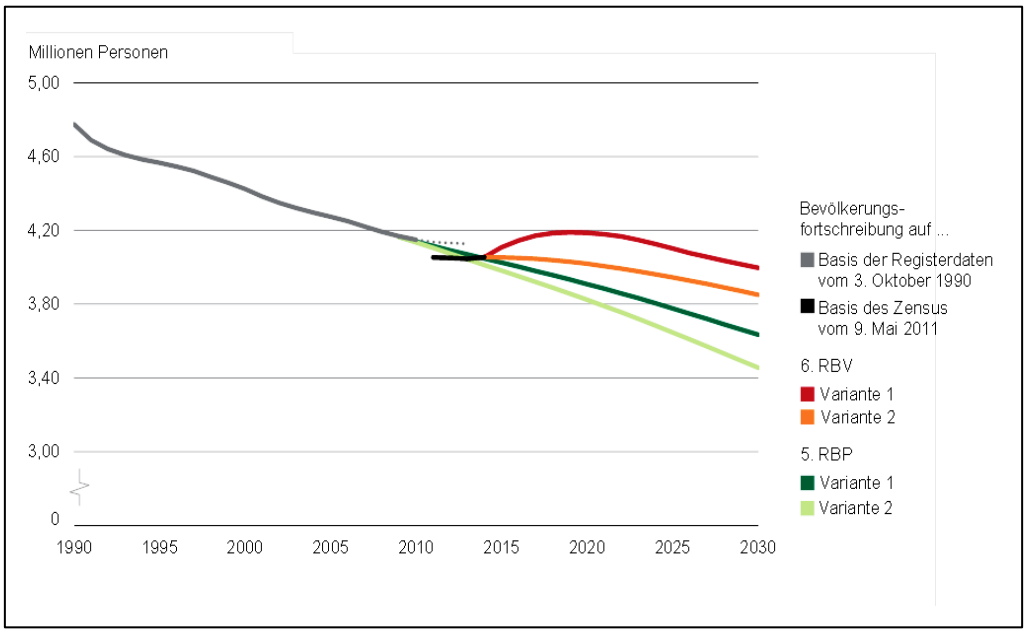
Two universities of applied sciences are responsible for the education for the public sector. One of them, situated close to Görlitz, exclusively trains students for the Saxon police force[2]; the other, situated close to the Saxon capital Dresden, in Meissen, qualifies students in the departments of financial and tax administration, social administration and social security, administration of justice, and general administration (state administration as well as communal administration, i.e. for municipalities, cities and districts)[3].

The graduates then enter the public sector at the so-called 1. entry level for the public service category 2. The layering of the personnel in Saxony is smallest at the level of the higher civil service (mostly jurists), and highest at the level of the upper intermediate civil service (all graduates of Meissen University of Applied Sciences) as well as at the level of the intermediate civil service (mostly after vocational training). The demographic development in eastern Germany (the former territory of the GDR) is especially regressive, in particular in the rural areas. Currently, the bigger cities such as Dresden, as the state capital, as well as

2 Hochschule der Polizei (FH) – Saxonian Police University.

3 Hochschule Meissen (FH) und Fortbildungszentrum des Freistaates Sachsen – University of Applied Administrative Sciences Meissen.

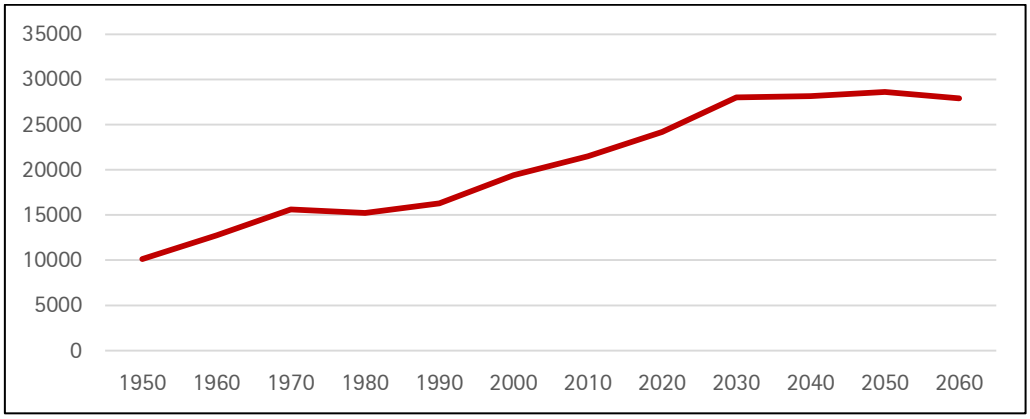
Leipzig and Chemnitz, see a considerable increase of their population. The development of the population and the age structure are illustrated in the fig. 2.



Source: Saxonian Statistical Office und Head Office of the personnelcommission (Personalkommission) 2016.

Fig. 2 Population prognosis (Population in the Free State of Saxony 1990 to 2030)

The statistical office of the Freestate of Saxony calculated a population forecast. For the years 1990 till 2030, there is a considerable, even dramatic, population decrease from 4.7 million inhabitants in 1990 to 3.5–3.9 million inhabitants in 2030. In addition, the share of the population aged 60 or over increases from 100.000 in 1990 to ca. 270.000 persons in 2030 and stays at this high level (see fig. 3).



Source: Federal Statistical Office and ifo „Institut für Wirtschaftsforschung e.V." in Munich (branch Dresden).

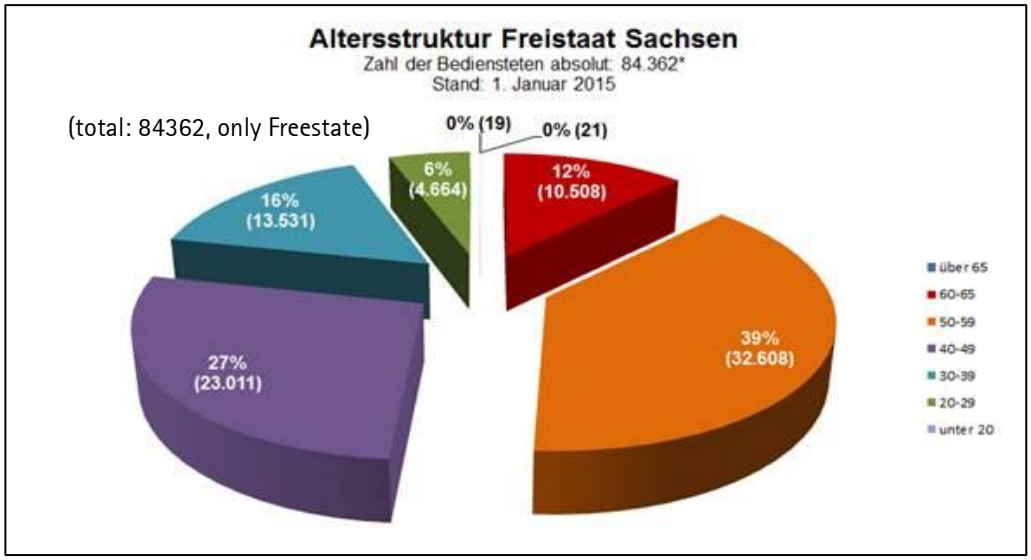
Fig. 3 Increase of the Saxonian population 60+

The age structure of civil servants in Saxony shows a share of 28% of employees aged 60 or over; the share of employees aged 50 or over is 67% of all employees (with an absolute number of employees of 84.362 on January 1st 2015). This data does not include the communal level, i.e.

municipalities, cities and districts, and their large number of employees.

3 CONSEQUENCES

This initial situation will lead to a loss of personnel in the regional government and in the communities of about 50% in the years 2016 to 2030 as is illustrated in the fig. 4.



Source: Head Office of the personnel-commission (Personalkommission) 2016.

Fig. 4 Age structure of civil servants in Saxony

The loss of personnel will obviously lead to a considerable loss of knowledge and support for the (political) administrative sector in the Freestate of Saxony. This is highly correlated with a loss of praxis-oriented and experienced instructors – which are indispensable to representing a very significant distinctive feature of the dual education system in the higher education system. In addition, there is the imminent fast ageing of the public administration: there is a tendency to higher rates of sick leave among employees in conjunction with longer periods of sickness due to an increased average age of the employees[4]. There is also an

4 Epidemiologisches Gutachten im Auftrag des Bundesministeriums für Familie, Senioren, Frauen und Jugend (BMFSFJ) - Präsentation bei der Fachtagung zum Thema „Gesellschaftliche Teilhabe im Alter. Welche flexiblen Altersgrenzen brauchen wir in

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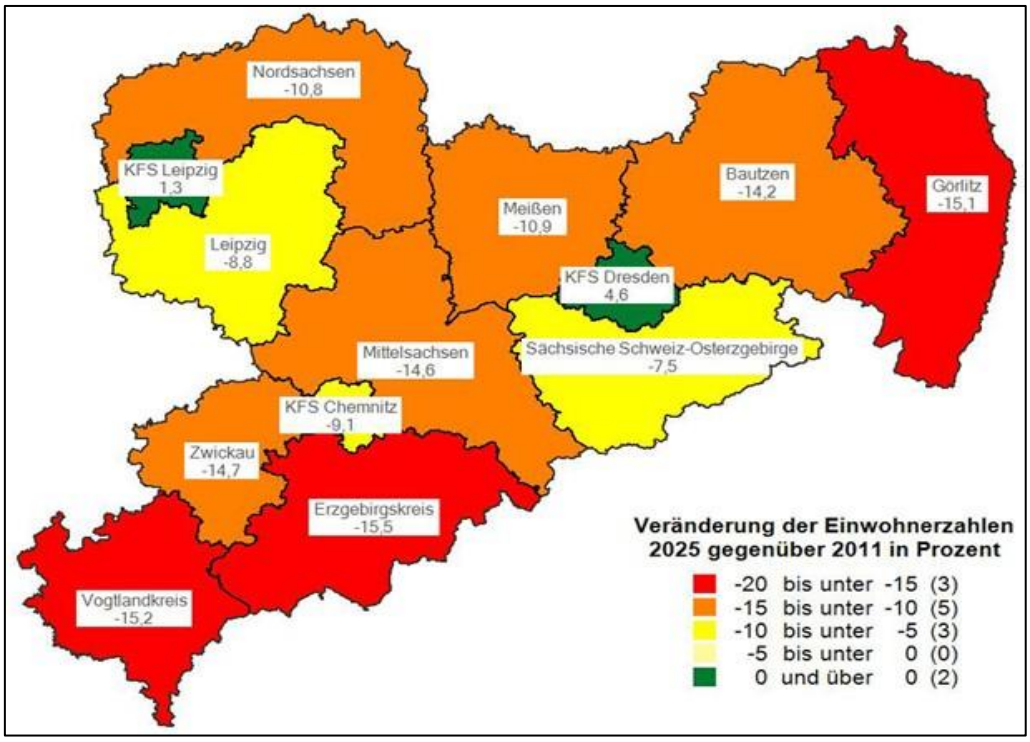
increased utilisation of offers such as early partial retirement or part-time work among younger civil servants. The generation 55+ that is leaving the labour market is often not prepared for the challenges of changing working environments and is not able to transmit knowledge in a digital form. In addition, there may be so-called generation conflicts, especially in cases of process optimisation and in the IT-sector. Older employees are often less willing to accept innovations. In addition, missing personnel complicates the practical education in universities. All universities, the University of Applied Administrative Sciences in Meissen included, experience a tendency towards less adequate applicants in quality and quantity for the course of studies. There is also a noticeable competition with trade and industry which will lead to further decreasing numbers of applicants. A specific challenge for the rural administrations is the decreasing willingness of graduates from Meissen University of Applied Administrative Sciences to work in rural areas and to choose those areas as places of residence[5]. This intensifies the haemorrhaging of the rural areas, as the fig. 5 shows.



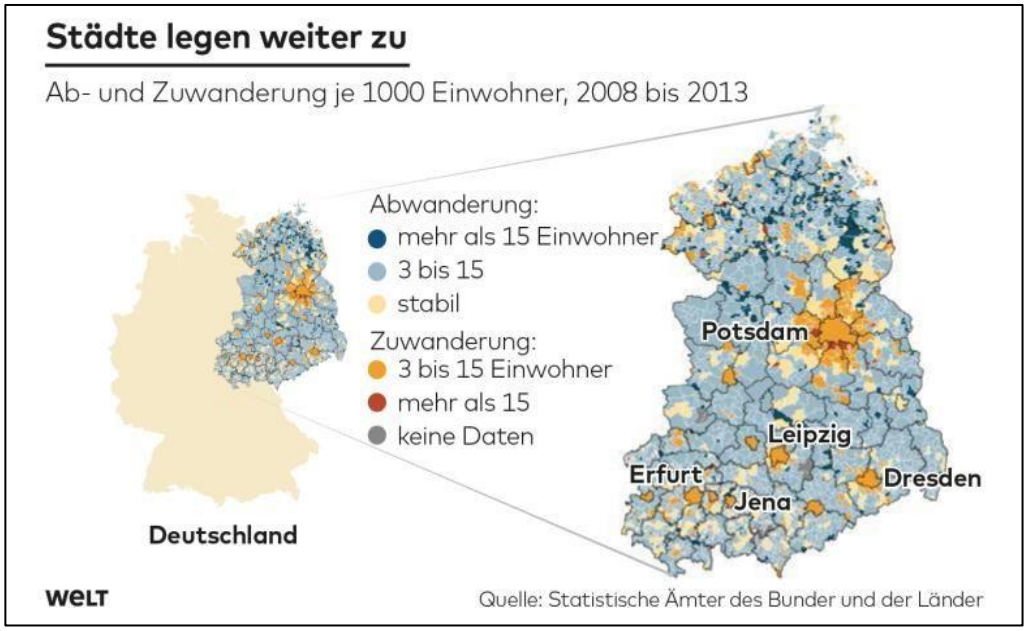
Source: www.demographie-portal.de

Zukunft?", am 10.12.2013 in Berlin [http://www.iges.com/e2856/e4186/e8617/e8618/e8648/e8649/attr_objs8655/IGES_Gesellschaftliche_Teilhabe_imAlter_Dr.Schueler_ger.pdf].

5 Ländliche Lebensverhältnisse in Sachsen: Ergebnisse einer Repräsentativbefragung im Freistaat Sachsen - Zentrale Ergebnisse – done by forsa (Gesellschaft für Sozialforschung und statistische Analysen mbH Berlin), 2014 [https://publikationen.sachsen.de/bdb/artikel/21033/documents/28373].

Fig. 5 Change to the population size 2011 to 2015 in Saxony

The education at the University of Applied Administrative Sciences in Meissen itself takes three years, therefore, a quick increase of the number of graduates for the Freestate and the communal level is impossible. In addition, the preparation time for choosing and winning students, i.e., for the application and selection procedures (which in Meissen are similar to the French Concours), is about one year. The long-term practice of understaffing led, among other consequences, to a skewed personnel structure; i.e., too many older, and too few younger, employees. There is also a real risk of a repetition of the situation of the 1990s with a quick staff recruitment, which in time led to bottlenecks for promotions. Furthermore, quickly recruiting a large number of personnel at a late time may lead to a violation of the principle of selecting the best candidates, as had possibly happened in the 1990s. On the communal level, there are reports that expert staff from smaller communes are recruited by larger communes, because they can offer better options for development and promotion (see fig. 6).



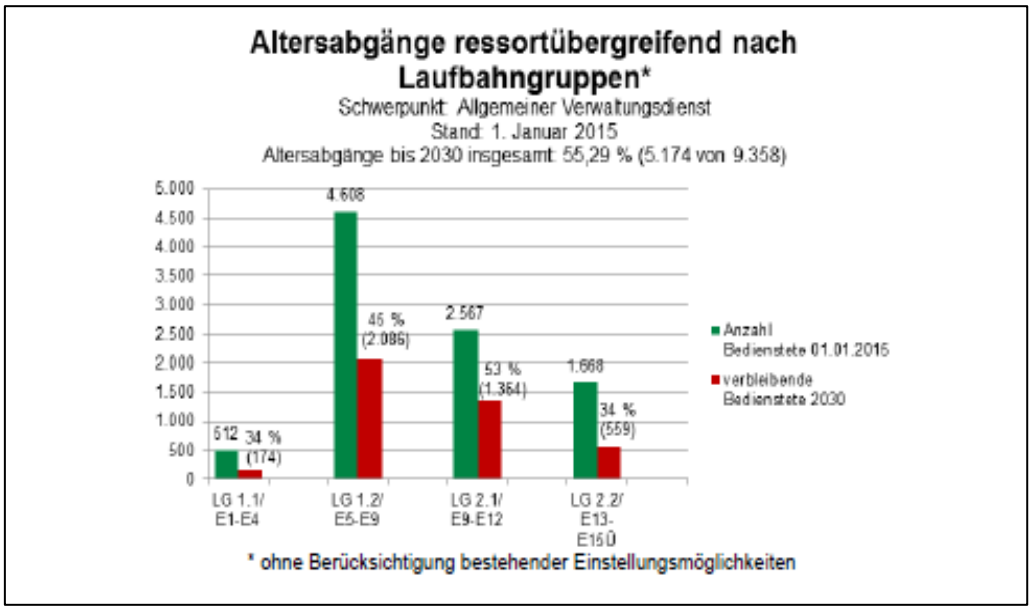
Source: Federal Statistical Office and Statistical Offices of the Bundesländer

Fig. 6 Rural regions in the eastern part of Germany suffer the scourge of emigration

The number of applicants is stagnating at a high level of about 1.700 applicants for about 200 places at the University of Applied Administrative Sciences in Meissen, i.e., about eight or nine applicants for every available place. The numbers of new matriculations, which at the same time mean an employment with an administrative unit in a dual system, are increasing only slightly

4 DEMAND ON THE FEDERAL STATE LEVEL UNTIL 2030

The internal administration of the Freestate of Saxony alone will need to qualify and employ 1.200 persons between 2016 and 2030 (see fig. 7).



Source: Head Office of the personnel-commission (Personalkommission), 2016.

Fig. 7 Need at State Level Saxonia (Only General Management)

Statement of the personnel-commission (Personalkommission): Up to 2030 approx. 1.200 Civil servants are needed.

This is an immense challenge for the University in Meissen. A class in universities with a structure like the one in Meissen must not include more than 30 (ideally, not more than 25) students. An additional class necessitates an increase in teaching staff of 1.5 persons in Academia and a full-time equivalent of 0.5 persons in the administration. This implies for the Freestate that with an additional four groups, there is an increase of personnel of at least 8 persons, or more if the increase in the number of classes is even higher.

5 MEASURES TAKEN BY MEISSEN UNIVERSITY OF APPLIED ADMINISTRATIVE SCIENCES

The university presented a first strategy document for the Ministry of the Interior in 2014 and suggested to expand the university analogous to the French École Nationale d'Administration (ENA). In the beginning of 2015, a task group was established at the ministry. It did not have any immediate results, but in 2016,

the state government established a personnel commission at the state chancellery that was to analyse the personnel requirements under the given circumstances in preparation for the cabinet dealing with the topic in 2017. These preparations are ongoing and will presumably be completed as planned on 31.03.2017. The university implemented the so-called Academy for the Public Administration of the Freestate of Saxony (as a centre for continuing education for all ministries of state). This increases the chance to offer a customer-oriented and modern continuing education in addition to the regular modern and ambitious university education. The university, after a long-term reduction of personnel in academia and administration, currently faces a situation where teaching can only be ensured by employing personnel that is regularly employed elsewhere for specific teaching modules. In addition, there are more delegated teaching staff, and the professional instructors must accept higher teaching loads. It has to be stated that specialists and young instructors are scarce or cannot be found at all anymore.

In spite of these challenges, the university implemented a master programme for Public Governance[6] that started on 12.09.2016 and is a further development of the existing successful part-time master programme Administrative Informatics. The development of a part-time curriculum for the master programme Public Governance includes four main fields:

- legal and administrative sciences,
- economics and management,
- information processing (in the broader sense)
- and process management.

The programme aims at providing interdisciplinary competences and specifications in the areas of management and process orientation as well as in the information technology, with an additional focus on teaching legal and economic aspects on a more global and complex level. The intention – in conjunction with the demands of the customers, i.e., bigger communes as well as the Freestate – to educate future executives as generalists.

6 https://www.fhsv.sachsen.de/studium/public-governance/.

6 POSSIBLE STRATEGIES OF THE FREESTATE

One strategic perspective for the Ministry of the Interior, in addition to the intended education offensive of the state chancellery, is to develop an education initiative with the help of Meissen University of Applied Administrative Sciences that needs the corresponding personnel endowment as well as improved financial and infrastructural equipment. The fact that there is an enormous increase in the demand for practical instructors that can only be supplied in cooperation with all levels of the administration supports the importance of a joint education initiative. This need for a practical education can only be met if significantly more persons are willing to support the students from Meissen during their practice periods and to prepare them for their challenging future jobs, in spite of the increased workload in the administration. The joint education initiative should be accompanied by an initiative for continuing education, which the centre for continuing education in Meissen[7] is prepared to support: The aim is to prepare current executives that are responsible for the management of the demographic changes for their work in a changing, digitalised work environment, for example by preparing them for the transition of knowledge to the next generation of employees. Therefore, an increased discussion of knowledge management as well as a stronger concentration on processes and their optimisation is essential and should be discussed and taught together with questions on project management within programmes of continuing education.

Due to requests from bigger communes, the introduction of a parttime bachelor for general administration is discussed. It would likely last for three years or more and would be suited for employees on the intermediate level of the civil service. An according request of the three large cities implies that the formation of a test-class may be expedient and may support the upper intermediate level of the civil service with its special knowledge and experiences. Whether this project is sustainable remains to be seen.

In addition the Freestate, in conjunction with the university in Meissen, considers whether students from neighbouring states such as Thuringia, Bavaria and especially Brandenburg should be included to also attract German-speaking students from the Czech Republic and Poland. This would support the European spirit as well, by bringing together the peoples from border regions such as the

7 http://www.avs.sachsen.de/.

district of Görlitz or the regions on the borders to the Czech Republic in the Erzgebirge or the Vogtland.

7 INCREASING THE ATTRACTIVITY OF THE CIVIL SERVICE

The Freestate should strongly consider increasing the attractiveness of working in the civil service[8], e.g., by employment guarantees and other monetary or non-monetary incentives, by development of career paths as already shown by some communes, but also by addressing of new target groups, e.g., by prioritising the education in the IT-sector and in process management. Last but not least, the development of Meissen University of Applied Administrative Sciences to a central venue for continuing education of civil servants across administration areas (also, and especially, executives) of the Freestate and the communes, by using its comprehensive competences in the legal, economic and IT education, has to be discussed. This would support the university which currently is already an important venue for undergraduate programs for all aspects of public activity.

8 CONCLUSION

The measures suggested offer the Freestate of Saxony a chance to successfully shape and organise the demographic change in spite of a decrease of personnel and a loss of knowledge, by using optimised digital techniques based on a solid professional training.

8 Kristin Klunker: (Un-)Attraktivität des öffentlichen Dienstes in Deutschland? – Wege zur Deckung des Personalbedarfs unter Berücksichtigung der Konzepte in ausgewählten europäischen Staaten, Abschlussarbeit im Master-Fernstudiengang Europäisches Verwaltungsmanagement an der Hochschule für Wirtschaft und Recht Berlin und an der Technischen Fachhochschule Wildau am Studienzentrum Brühl (Fachhochschule des Bundes für öffentliche Verwaltung), 2009 [http://www.verwaltungsmanagement.info/docs/Klunker_Attraktivitaet_des_oeffentl_Dienstes_2009.pdf].

HUMAN RESOURCES IN PUBLIC ADMINISTRATION – CURRENT CHALLENGES AND EXPECTATIONS (THE POLISH-LOWER SILESIAN PERSPECTIVE)

1 INTRODUCTION

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The issue of administration personnel continues to be valid in research into public administration, especially in the research area of administration studies. The reason is that we are increasingly beginning to recognize that the execution of public administration tasks is effected by its personnel's actions. The personnel holds positions of monocratic bodies and participates in the operations of collegial bodies as is the case in a local selfgovernment. Obviously the selection of councillors of bodies making up local self-government units or the appointment, selection or another form of creation for positions of province governors or ministers results from processes of democratic creation of power bodies where questions about professional qualifications are not always justified (voters are not always guided by an eligibility criterion) whereas employment in public administration and organizational units, especially in civil service positions, should follow a careful selection of candidates for the relevant positions.

When conducting any deliberations on public administration personnel I often refer to a quotation from T. Górzyńska's dissertation: "Legitimate theoretical assumptions, good law, thought-out structures and meticulously developed working methods will practically turn really efficient only if they are effected by a personnel that understands the essence and

objectives of public service, a personnel that is professionally and morally prepared for the assigned tasks"[1]. The date of this statement is worth underlining – 1985 – *i.e.* 30 years ago, the days when Poland was part of the so-called people's democracies camp and followed a socialist state regime no matter how abstract and culturally alien to its citizens were the system's ideological assumptions taken, given the society's tradition of fostering a system of values absolutely at odds with the ideology's values.

In those days the personnel selection was subject to equally ideological assumptions[2] and T. Górzyńska's statement clearly deviated from the stereotypes of the day. However, the system's transformation of the early 1990s in the democratic state of law unfortunately did not at all invalidate its relevance and helpfulness.

This obviously causes one to ask questions about the reasons for such a state of affairs given Poland's democratic rule of law system today in which ideological considerations should give way to the legal order. In my view the reasons are twofold in nature: legal and sociological. The first refers to the condition of the law that sets forth employment regulations in public administration. The second refers to convictions about bloated public administration structures and personnel which are deeply rooted in the society's mindset. And both stem from the conscious actions of people actively involved in shaping the country's policy. Over the past twenty five years Poland's democratic system has seen the country's political decision makers either fail to look into the condition of the legal regulations at all[3] or made it a point of serious political disputes[4] or blatantly made it an instrument for getting at hasty political objectives.[5]

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1 Teresa Górzyńska, Stanowiska kierownicze w administracji państwowej. Zagadnienia prawne [Managerial Positions in State Administration. Legal Issues] (Ossolineum 1985) 70.

2 Criteria such as a guarantee to perform an employee's duties diligently on account of an ideological and moral level prevailed in the regulations of acts providing the foundations of employment in the-then state administration, see art 11 sec 4 of 15 July 1968 Act on national councils employees (Dziennik Ustaw – Official Journal of Laws of the Republic of Poland (hereinafter: Dz. U.) No 25, item 164), also para ordinance of the Council of Ministers dated 20 December 1974 on the rights and duties of employees of state offices (the Dz. U. No 49, item 300), in a just a little amended wording art 3 point 4 of Act of 16 September 1982 on employees of state offices (Dz. U. 2013, item 269).

3 The Act of 16 September 1982 on employees of state offices (Dz. U. 2016, item 1511) provides an example. Despite the archaisms of terms used herein, very often not referring at all to existent bodies and offices of public administration, to a large extent dead and not performed and despite an evident need to provide modern regulations of employing

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2 THE CHARACTERISTICS OF THE POLISH CIVIL SERVICE LAW

It should be stressed most importantly that since World War II Poland has never returned to the civil service model most common in Europe, a model of a public service career treating civil service law as a law of a public organization of the administrative personnel and using a corps system to this end. At the same time Poland did not adopt the Anglo-Saxon model of positional employment but developed its own intermediate model between the two models. This resulted in treating civil service law as part of the labour code[6], without it being subject to the general act though, *i.e.* the Labour Code; however, with numerous scattered and incomplete – regulations-wise – official civil service pragmatics.

This makes them unsustainable acts because each example of pragmatism in a certain part of the employment of officials requires the application of either the regulations of the Labour Code or other acts of the administrative constitutional[7]

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state employees has not been replaced by a contemporary comprehensive legal regulation apart from fragmentary amendments.

4 Our politicians needed 6 years to develop the form of the Polish civil service. Even though preparations took off as early as in 1990 the Act on Civil Service was adopted only on 5 July 1996. Hardly had it become binding when it was amended with a new act on account of a political scandal arising from appointments of director generals of government administration offices not in accordance with the Act's provisions. See Jerzy Korczak, 'Kadry administracji publicznej wobec przeobrażeń we współczesnym prawie administracyjnym' [Public administration human resources and changes in contemporary administration law] in Adam Błaś (ed), Współczesne problemy administracji publicznej i prawa administracyjnego. Materiały z sesji naukowej na temat przeobrażeń we współczesnym prawie administracyjnym [Contemporary public administration and administration law issues. Materials from a research session on changes in contemporary administration law] – Wrocław, November 1997 (Terra 1999) 43-56.

5 The amended Act on Civil Service of December 2015 provides an example – the Act of 30 December 2015 on amending the Civil Service Act and some other acts (Dz. U. 2016, item 34) that were aimed at getting rid – from government administration offices – of people holding senior positions in civil service and transferred to those positions in the past i.e. when today's opposition was in power. See on this issue Jerzy Korczak, 'Antywartość w prawie administracyjnym jako zamierzony skutek legislacyjny' [Anti-value in administration law as an intended legislative measure] in Adam Błaś (ed) Antywartość w prawie administracyjnym [Anti-value in administration law] (Lex a Wolters Kluwer business 2016).

6 Act of 26 June 1974 – Labour Code (Dz. U. 2016, item 1666).

7 For example, the status of the city mayor in Poland is regulated by as many as three acts: the Act of 21 November 2008 on self-government employees (Dz. U. 2016, item 902) i.e. self-government civil service pragmatics; the Act of 8 March 1990 on municipal selfgovernment (Dz. U. 2016, item 446 as amended) i.e. political system act; and the Act of 5 January 2011 – Electoral Code (Dz. U. 2011, No 21, item 112 as amended) i.e. electoral law.

or substantive law[8]. If we take into account the public administration system that – despite the unitary character of the state – divides it into three fundamental sectors: state administration, centralized government administration and decentralized administration that additionally is divided into local self-government administration and that of economic and professional self-governments. The state administration is not related to the government. At its most it is subject to parliamentary control[9], however, it does not have a common superior, which makes each of its bodies have a separate legal regulation and the regulations of the aforementioned act on state offices employees apply to those employed only to a small degree. Despite being centralized under the authority of the Prime Minister the government administration is internally diversified because, apart from those employed in civil service positions within the framework of employment relationships, there are officials employed within the framework of service relationships[10]. In addition, the group employed within the framework of employment relationships is divided into civil service corps and foreign service corps.

Finally, within the civil service corps there are varieties related to belonging to the general administration under the authority of province governors and specialist administration. The local self-government administration's feature is primarily the independence of communes, counties and provinces of one another. Consequently, employment occurs in the area of a given unit even though the regulations of the self-government pragmatics make it possible to transfer officials between units upon the mutual agreement of managers of particular organizational units. As far as the administration of economic and professional self-governments is concerned, there are no civil service positions and functions in the selfgovernment bodies are performed without establishing an employment relationship.

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8 For example, the status of the county construction supervision inspector is regulated by the Act of 21 November 2008 on civil service (Dz. U. 2016, item 1345 as amended) i.e. civil service pragmatics as well as the Act of 7 July 1994 – Construction Law (Dz. U. 2016, item 290) i.e. substantive law act; in turn, the status of the provincial conservator-restorer is also regulated by civil service pragmatics – act on civil service – as well as substantive law – the Act of 23 July 2003 on monument protection and monument care (Dz. U. 2014, item 1446 as amended).

9 For example, General Inspector of Personal Data Protection, or the Ombudsman.

10 For example, officials of Police, State Fire Brigade, Border Guard, Prison or Special Services: Central Anti-corruption Office, Home Security Agency, Home Intelligence Service, Foreign Intelligence Service, Military Intelligence Service, Military CounterIntelligence Service, etc.

In contrast to the traditional model of the civil service career whereby on account of the public and legal nature of the civil service position employment was effected in the main on the basis of the nomination, the Polish civil service law model is characterized by a multiplicity of legal forms of establishing an employment relationship; only service relationships are established on the basis of acts of nomination and acts of appointment. For officials employed within the framework of the employment relationship the following acts are applied: acts of selection[11], acts of appointment[12], acts of nomination[13] and employment contracts[14].

Attention should be drawn to the fact that relevant regulations of the Civil Code introduce a notion of the presumption of an employment contract as a form of establishing an employment relationship, whereas for the remaining acts identifying each of them in the given pragmatics[15] is required. This – amidst those employed in public administration in general (not taking into account the aforementioned differentiations) – results in the group employed within the framework of the employment contract prevailing absolutely over the other groups differentiated on account of their employment model. It should be noted that ,whereas a transfer of a civil service corps employee from the employment contract category to a civil service nomination category as a result of the successful passing of the relevant qualification proceedings[16] is possible only in

11 The following are employed through an election act: heads of rural communes, mayors of towns and presidents of cities, district governors and other members of county management boards and marshals as well as other members of province offices management boards.

12 Applicable for filling positions of managers of central government administration offices, province governors as well as treasurers of communes, counties and province offices and deputies of heads of rural communes, mayors and presidents of cities.

13 Quite rarely for some government officials, but primarily civil servants; since 2009 there have been no nominated officials in a local self-government.

14 Fundamentally, this form prevails in state administration, government administration (corps members not being part of the civil service corps) and self-government administration offices.

15 Provision of art 68 para 1 stipulates that an employment relationship is established on the basis of an appointment in cases set forth in separate provisions and so stipulates art 4 sec 1 point 2 of self-government pragmatics. Provision of art 73 para 1 stipulates that an employment relationship on the basis of an election is established when an obligation to carry out work as an employee results from the election and on account of this art 4 para 1 point 1 of self-government pragmatics lists the aforementioned holders of executive bodies of local self-government units as self-government officials employed on an election basis. In turn, provision of art 76 stipulates that an employment relationship is established on the basis of nomination in cases set forth in separate provisions and art 3 point 2 in relation to art 49 of civil service pragmatics.

16 See paras 40-51 of civil service pragmatics.

the civil service corps as far as self-government employees are concerned despite the presupposed para 20 of the self-government pragmatics in-house promotion, which may consist in a transfer from a public administration employee position to a managerial public administration position; however, this does not entail a change to the form of establishing an employment relationship since the two categories of positions are covered by the same employment form.

The state of the regulations of the Polish civil service law characterized this way is not conducive to appropriate personnel recruitment and its further development, notably when the above is aggravated by considerations of political nature and unavoidable pathological phenomena (nepotism, the dishonesty of recruitment team members). Sociological conditions pointed out in the early paras add to its negative characteristics. Their general undertones are a critical approach to the administration as such and to its representatives – employees and officials holding positions in the public administration bodies in particular. They do not arouse the trust of society[17] and are often abused by politicians being blamed for the failures of political programmes and initiatives regardless of whether an individual official is in a position to hamper the delivery of the programme or make up for the politicians' faults.

3 ANALYSIS OF EMPLOYMENT DATA AND DEMOGRAPHIC STRUCTURES OF PUBLIC ADMINISTRATION PERSONNEL IN POLAND

There is a dispute regarding the number of those employed in public administration in Poland as well as in other countries. The dispute is between those who think that the number is too high and has been on the increase and those who believe that the number is not adequate to meet social needs, which is reflected in queuing applicants waiting a long time for their matters to be formally completed. This dispute is of the insoluble type as there are no appropriately established statistical research methodologies that help unequivocally calculate the number of people employed in public administration in civil service positions since objective selection criteria are non-existent due a

17 For further info on this issue see Jerzy Korczak, 'Pozyskiwanie i umacnianie zaufania do władz publicznych przez współadministrowanie' [Winning and enhancing trust in public authorities through co-admininstration] in Małgorzata Stahl, Michał Kasiński, Katarzyna Wlaźlak (eds), Sprawiedliwość i zaufanie do władz publicznych w prawie administracyjnym [Justice and trust in public authorities in administration law] (Lex a Wolters Kluwer business 2015) 98-114.

different classification of positions set forth by each public administration act. Consequently, the Central Statistical Office most often gives employment data in the public sector and only then the number of those employed in particular sectors of the state, government and local self-government administrations. However, these data are not accurate. In turn, those that claim bloated personnel use a term 'official' to denote anyone employed in public administration and fail to remember that apart from a person employed in a civil service position we often come across a front desk person looking after the city's green areas or funeral services.

In 2014 the number of people employed in the whole public sector stood at 3 million. In the government and state administrations it was over 440 000 people, in the local self-government it was 260 000 people. These data are set against 1989 i.e. the beginning of the system's transformation, the days when the state administration employed 160 000 people. Such a juxtaposition is flawed. Firstly, any statistical data from the socialist state days are not reliable. Secondly, the distinctness of the public administration's system – uniform and centralized at the time and in stark contrast to today's decentralised one – is not taken into account. Thirdly, the growth of the public services sector arising from new social needs and stemming from new technological innovations is not taken into account. And fourthly, some tasks of the contemporary public administration had been done by the so-called public utilities not listed at the time in the state administration. Journalists and other public debate participants cite – in their discussions about the state of Poland's state administration – examples of other European countries where employment in public administration has fallen by about 800 000 across the European Union over the past few years. They fail to quote the sources of these data or the methodology of their aggregation, though. Poland has seen diversified processes in employment level changes. The reason is that on the one hand employment in the government administration has been falling and on the other hand it has been on the increase in the self-government administration. Consequently, it is impossible to judge the phenomenon in an unequivocal manner.

The number of public administration offices as potential employers of officials should be taken into account. The number is a function of the legal regulations appointing particular administration bodies and the offices serving them (contrary to some views, offices are not created at random nor is it a

spontaneous process). The state's central level features 24 ministries[18] and over 80 state and government offices[19]. Provinces boast 16 province offices and an appropriate number of offices of territorial bodies within divisions of central bodies having its own territorial structures. In addition, there are self-government offices (16 province marshal offices). Then, apart from 314 districts on the county level, there are an appropriate number of general county government administration bodies under the authority of a district governor and specialist ones (county vets). Finally, there are communes and municipalities in 2478 communes. If we add to that simple territorial and constitutional scheme bodies of atypical territorial structures (e.g. sea offices, mining offices and the like) the number of a few dozen thousand offices does not seem to be excessive or unjustified. However, it should be taken into account that apart from the classical administrative office there are many organizational units in administration that employ in civil service positions. Employment in these offices is not a constant given natural fluctuation and a consistent fall in employment in government administration and a simultaneous growth of its level in self-government administration. Still, both fluctuations and a host of other processes affecting the state of the personnel have been giving rise to doubts regarding their adverse effect on the efficiency of public administration.

The first one is a fall in employment in general. In just the civil service corps 3 700 members have left since 2010. At the same time the total number of civil service positions has dropped by 1 155 and stood at 119 300 towards the end of 2015. As much as 38% of offices reduced employment; the IRS administration itself cut 748 positions. Fluctuation is another phenomenon that in 2015 only stood at 7.3%; in some offices it went up to over 20%.

In parallel a decreasing attractiveness of being employed in the civil service corps can be seen. This shows that working within this elite civil personnel is not attractive at all. 2015 saw another fall in the number of applicants per vacancy, down to 19 applicants on average. Back in 2013 the number was 36 and in 2014 it stood at 24 applicants per vacancy. The ever decreasing attractiveness of employment in civil service positions in government administration results in a lower number of applications of young people *i.e.* up to 30 years of age (10.4% in 2014 down to 9.0% in 2015). The number of applicants aged 31-50 has been

18 Their number is dependent on ordinance issued by the Prime Minister on the basis of art 33 para 1 of 8 August 1996 Act on the Council of Ministers (Dz. U. 2012, item 392 as amended).

19 Each of them have a separate act basis.

on the increase (from 57.4% in 2014 up to 59% in 2015). The number of applicants aged 51-55 has decreased by 1% down to 30.8. It has remained unchanged for applicants over 65 and has stood at 1.2%. In 2015 despite these trends 5 000 people took up employment in civil service positions for the first time, which is a substantial increase compared to the past years and making up 73% of people employed in vacant positions within the framework of the selection process.

Moreover, the structure of those employed in the civil service corps is deteriorating as far proportions between its members and civil servants are concerned. As previously pointed out in line with art 3 of the act the corps is fundamentally divided into two categories of people employed in civil service positions: civil servants employed on the basis of an employment contract and nominated civil servants – on account of a low number of nominated civil servants maintained over the past years, the number of civil servants does not go beyond 6.5% of the total corps members (7 745 jobs). Out of the total number of 119 000 employed in civil service positions 12 345 are ministry officials (even though out of these 2 517 only are nominated officials), 10 926 are officials within central offices (here 625 are nominated officials), 8 578 are officials of provincial offices (among them 642 are nominated), 14 823 are officials of general administration in the province (with 203 nominated), 8 615 are officials of general administration in the county (with only 22 nominated), 40 920 are IRS administration officials (with 2 150 nominated officials) and 4 963 officials in IRS control units (among them 924 are nominated). The remaining specialist administration employs 16 842 officials (including 351 nominated) and the diplomatic corps employs 1 245 (with 311 nominated). The nomination of a civil servant is dependent first of all on the quotas set in the budget act of a given year, which for 2015 meant 200 people. 36 KSAP (National School of Public Administration) graduates applied. They were nominated in the statutory manner. Out of 828 applicants (in 2014 - 880) 291 successfully completed the recruitment stages, which resulted in the final nomination of 162 successful applicants (this means that 2 nominated civil service positions were not filled).

The gender employment structure is also getting worse. The corps is feminized – 70% of those employed are women. Women also occupy 53% of senior positions.

Despite regulations friendly for employing the handicapped their employment level is low and stands at 3.9%. Nevertheless, there are single offices boasting as much as 12%.

In 2009 art 4 of the Civil Service Act was amended with a reservation that a Polish citizenship requirement to be eligible for membership in the corps is not absolute. Art 5 stipulated that citizens of EU member states as well of as other states with which Poland signed relevant bilateral agreements can be employed in civil service positions identified by the General Director of the Office. Consequently, an influx of the corps members of those countries was expected. Indeed in 2105 10 foreigners applied for vacant civil service positions; however, only 1 of those was employed.

4 ANALYSIS OF EMPLOYMENT DATA AND DEMOGRAPHIC STRUCTURES OF PUBLIC ADMINISTRATION PERSONNEL IN LOWER SILESIA

Against the backdrop of the country-wide data the Lower Silesian situation does not deviate from general trends seen in the other regions. It should be remembered that the government administration exclusively on the level of the province and the county in parallel to the provincial and county self-government is operating in the Lower Silesian province. The communes have a commune self-government only. This is why employment in public administration will concern only employment in offices and organizational units of the government administration as well as offices and organizational units of the local self-government. There are 26 counties and 4 towns with county rights in the province (Wrocław, Wałbrzych, Legnica and Jelenia Góra). Within this territorial structure in the government administration there is 1 Lower-Silesian Province Governor's Office along with its 3 subsidiaries (in Wałbrzych, Legnica and Jelenia Góra) and accordingly provincial Police and State Fire Brigades inspectorates, provincial inspection bodies, IRS and customs chambers, in addition subsidiaries and branches of central state offices (e.g. the Supreme Audit Office, the National Labour Inspectorate), in addition at the county level there operate relevant county police stations, inspectorates and fire brigades as well as 34 IRS offices. As far as self-government administration is concerned it is evident that 1 Lower Silesian Province Marshal's Office along with multiple organizational units[20], 26

20 The list included in the Public Information Bulletin encompasses the Lower Silesian List of Wildlife Parks, the Lower Silesian Road and Railway Service, the Lower Silesian Board of Melioration and Water Facilities, Territorial Development Institute, the Lower Silesian Office of Geodesy and Agricultural Areas, the Regional Office of the Province of Lower Silesia in Brussels, the Province of Lower Silesia Labour Office in Wałbrzych, the Lower Silesian Social Policy Centre, , the Lower Silesian Mediation Institution, 4 Provincial Traffic Centres, the Lower Silesian Agricultural Consultancy Centre, and 13 schools, 6

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districts and 169 municipalities should be taken into account. 46 065 people were employed in these offices and organizational units in 2015. In relation to the 2005 count of 41 701 this represents an increase of 10.5%. The number includes 14 435 employed in the state administration, 11 040 employed in the government administration and 20 582 employed in the self- government administration. Each sector of the Lower Silesian public administration has seen a different dynamic of its employment structure. The number employed in the state administration has not seen fundamental changes. The number employed in the government administration has seen a drop of 7% over the past 5 years. Employment in the self-government administration has grown by 3%. The counties have seen a drop of nearly 5% whereas the province has seen a growth of 20%.

Only a more detailed analysis of the statistical data reveals a complete picture of the processes taking place in the condition of the Lower-Silesian personnel. An issue of ever decreasing attractiveness of public administration jobs is confirmed. 7 884 people were employed in 2005 in contrast to only 5 382 in 2015. It should be noted that from among those employed a group previously employed was dominant since a bare 665 people were employed for the first-time and from among those 383 were graduates. If we juxtapose this number against data of annual LowerSilesian graduates the result of this juxtaposition is worrying.

This leads to an analysis of the employment structure in public administration in terms of employment level. According to 2104 data made available by the Statistical Office of Wroclaw the Lower Silesian administration had 344 employees boasting a PhD or higher degree, 18 918 employees with a Master's or equivalent degree, 3 928 employees with a Master of Science in Engineering or Bachelor's degrees. In the same period 1 527 undergraduates were employed in the administration, 4 678 with secondary vocational education and 17 772 with secondary education. Apart from civil service positions – in auxiliary and service positions – there were also employed 1 337 people with a vocational education and 521 people with gymnasium and primary or incomplete primary education. It should be remembered that civil service positions must not be occupied by people below secondary, vocational or *lycee* level education.

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pedagogical libraries, 4 teacher education centres and 4 educational centres, 17 cultural institutions and a few dozen medicare entities.

An issue of feminised personnel is also confirmed. Women made up 66.1% of the total 46 000 employed. Women also prevailed among those newly-employed in 2015 – 58.9% among those taking up employment for the first time about 60%, and among those also graduates i.e. 73%.

The aforementioned processes of the ever decreasing attractiveness of employment in administration and a falling number of graduates taking up first employment in administration also affect the structure of age brackets of Lower Silesian officials. According to data made available by the Wroclaw Statistical office towards the end of 2014 the most numerous group were officials aged 55-59 (5 676), then officials aged 35-39 (5 250), followed by officials aged 30-34 (4 850), 40-44 (4 469) and 50-54 (4 360). These were followed by officials aged 45-49 (3 646) and two age groups of 25-29 (2 128) and 60-64 (2 059). The least numerous were two boundary age groups: 20-24 (323) and over 65 (264).

The aforementioned fluctuation issues – signaled across the country as a weakness of the legislation that does not tie an official to the administration for their entire professional career which was the case in the early stages of the civil service law in the Prussian professional career model – can also be seen in Lower Silesia. In 2015 employment relationships were terminated with 8 806 officials (including 3 187 women). Given that 5 382 officials were newly employed in 2015 an overall fall in the number of employed is evident, a point already made. The analysis of the reasons for an employment freeze leads to the following findings. Out of the total number of terminated employment relationships 3 640 were terminated by an employer, 297 were terminated by an official, 106 were terminated due to certification of incapacity for work and 831 were related to retirement. Maternity leaves also affected the employment numbers (208 officials, almost 100% by women). The employment and terminations statistics results in a high differentiation of employment tenures in administration. The most numerous group – 9 576 officials – has the longest tenure i.e. at least 30 years; nearly half the size – 5 205 officials – is covered by a 5-10 years' tenure group, followed by the following tenure groups: 1015 years (4 560 officials), 15-20 years (4 151 officials), 20-25 years (3 657 officials) and 25-30 years (3 550 officials); finally 2-5 years (1 399 officials) and the least numerous group – 927 officials – with a tenure of up to 2 years. The above analyses show that groups of officials fundamentally match age groups in terms of tenure. Consequently, the most senior officials are the most numerous group. They began their professional career still in the administration of the socialist country, a country that was centralized and founded on ideological foundations rather than legal ones. It is

they who are identified as creating a negative administration image. Even though they are most apt at performing their office duties they are loaded with habits ingratiated from the early days of their employment when their professional attitudes were being shaped i.e. a typically authoritarian treatment of a citizen as an applicant rather than a client or a public service customer.

To illustrate the aforementioned process one can cite the case of the Lower Silesian Province Marshal's Office. Towards the end of October 2016 there were 1 011 jobs; 1 028 officials were employed, which represents an increase of 2% in relation to the status of 2015 year end. Similar to the aforementioned analyses of the public administration HR condition this office also employs more women (761) than men (268). Their qualifications are mostly high (980 officials) against 48 officials with secondary education and 1 official with vocational education. The age structure is as follows: 506 officials aged 31-40, 220 officials aged 41-50, 122 officials aged 20-30 and 121 officials aged 51-60, finally 60 officials aged over 60. Within 2016 there were announced 71 recruitments for 74 vacant civil service positions, including managerial positions. 42 selections were completed till the end of October. 36 people were identified for employment. 29 selections were due to be completed till the end of 2016. The Office job attractiveness is clearly dependent on the position's place in the hierarchy and job description. For example, a record 24 applications were filed for a position of Specialist in Waste Water Management Department within the Environment Division. In contrast, not a single application was filed for a position of Chief Specialist in the Applications Department within the IT Division.[21]

For comparison, 183 job announcements were made in the Lower Silesian Province Office in 2016. Out of these 158 were completed, 23 are ongoing and 2 announced in December. Out of 158 selections 113 people were identified for employment; however, 4 of them gave up on an employment, in 4 cases the recruitment was cancelled, in 7 cases no applications were filed and in 4 cases the applicants did not meet formal eligibility criteria. Failing to meet the formal eligibility criteria through announcements about the results of the recruitment

21 In 3 cases 1 application was filed, in 8 cases 2 applications were filed, in 3 cases 3 applications were filed, in 4 cases 4 applications were filed, in 3 cases 5 and 6 applications were filed, in 5 cases 7 applications were filed, in 1 case 8 applications were filed, in 2 cases 9 applications were filed, in 1 case 10 applications were filed, in 2 cases 11 applications were filed, in 1 case 12 applications were filed, in 2 cases 13 applications were filed, in 1 cases 15 and 18 applications were filed, and in 1 job announcement 21 applications were filed for 2 position.

results on BIP DUW website makes it impossible to evaluate the recruitment frequency.

5 CONCLUSION

The paper presented the legal conditions of employment in each public administration sector. Then statistical data on the general condition of employment and the condition of employment in particular sectors across the country and in the Province of Lower Silesia were presented. Demographic data were used. The data enabled an analysis of the employment structure in terms of sex, age brackets and qualifications as well as an analysis of employment fluctuation data. Their appropriate juxtapositions and comparative studies reveal a picture of the condition of the Polish and Lower-Silesian public administration personnel, a not very uplifting picture. Setting aside populist views on allegedly excessive employment and its bloated levels in particular offices and organizational units the personnel presents itself as too feminized (this gives rise to a social perception of the civil service job as being appropriate for a woman rather than a man), outdated (groups advanced in their age prevail) and not attractive enough as an employment offer for young graduates.

A preliminary diagnosis of the reasons for such a state of affairs is not only a layer of the aforementioned sociological conditions but primarily a normative layer of the civil service law regulations. These regulations do not allow for delivering a uniform and comprehensive HR policy. The regulations governing the recruitment for vacant civil service positions are not correct. Neither are ones on in-house promotions and assessment system. Finally, pay regulations do not create effective incentives to apply for public administration jobs. Due to their scattering and lack of cohesion the civil service regulations are not conducive to creating equivalent employment systems in particular public administration sectors. And *last but not least* it should be noted that the civil service regulations' weakness is their excessive dependence on political influence even though art 153 of the Constitution guarantees a political neutrality of the civil service corps.

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GENERAL RIGHTS AND OBLIGATIONS IN THE GERMAN SOCIAL SECURITY LAW

1 INTRODUCTION

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For more than 40 years now the German Social Security Code No I (`Sozialgesetzbuch Allgemeiner Teil` - `SGB I`) has provided the general legal framework for social equity and social security in Germany[1]. The Social Security Code No I provides general rules for the whole social security administration in Germany, based at arts 20 and 28 of the German Constitution[2] (Basic Law of the Federal Republic of Germany `Grundgesetz` – `GG`). The principle in art 20 and art 28 GG is called `Sozialstaatsprinzip`[3]. The term is according to the basic guidelines of the German state, but means only an objective (`Staatsziel`); it is not used to claim social rights[4].

Why is this something special? These rules providing social law shall be effectively administrated on the one hand, but all the time facing the citizen, the applicant.

Compared with other fields of law, we are facing a very `citizensfriendly` legislation. 40 years – a good reason to speak

1 Declaration of the Social Security Code No I at 01.12.1975.

2 Arts 20 and 28 German Constitution statute Germany as a democratic and social federal state, the so called ´principle of a social state – `Sozialstaatsprinzip`.

3 Hans F. Zacher, Abhandlungen zum Sozialrecht (1th edn, CF Müller 1993) 3.

4 It is not possible to claim social benefits in cash out of arts 20, 28 German Constitution.

about this `old` law. This article will try to give an answer to the question above. Is this legislation still `up to date'?

The core elements of all the different social security laws are to provide conditions of equal development chances for each person and the possibility to maintain oneself by individually chosen work, and, last but not least, alleviating difficult situations in life with the help of public support[5].

First of all, the so called `Social Rights`[6] are written down in arts 210 Social Security Code No I. These provisions transfer these aims into law as the legal base for the whole administration of social security. Social rights, for instance, are the promotion of education and employment, social insurances and social welfare[7].

Jurisdiction and the legal literature agree about the interpretation that those written `rights` only have the character of a declaration[8] and not the character of real `rights`[9].

In fact, they are rather principles or headlines[10]. The transfer into real `rights` is specified by the special social security law, stated in the Social Security Code No II-XII (`Sozialgesetzbuch Zweites Buch – Sozialgesetzbuch Zwölftes Buch` – `SGB II-SGB XII`)[11]. This article will not answer the long discussed question as to the value of these principles in the German social security system[12]. The

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5 Art 1 Social Security Code No I – hereinafter: SGB I, of 11.12.1975, Bundesgesetzblatt – Official Federal Journal of Laws, hereinafter: BGBl. I 3015, last amendment 17.08.2017, BGBl. I 32147.

6 No benefits in cash can be required; see Wolfgang Klose in Kurt Jahn, Gustav Figge, Günter Wältermann, Dietrich Wiegand, Lutz Menard (eds), Sozialgesetzbuch für die Praxis (Haufe-Lexware 2011) art 2 m. n. 8.

7 Arts 3-10 Social Security Code No I.

8 Robert Steinbach in Karl Hauck, Wolfgang Noftz, Ulrich Becker (eds), Sozialgesetzbuch SGB I Allgemeiner Teil (Erich-Schmidt-Verlag ESV 2017) K para 2 m. n. 25.

9 Ottfried Seewald in Anne Körner, Stephan Leitherer, Bernd Mutschler (eds), Kasseler Kommentar - Sozialversicherungsrecht (CH Beck 2017) art 2 m. n. 7.

10 Bertram Schulin, `Einführung` in Bertram Schulin (ed), Sozialgesetzbuch (dtv Beck 2017) XXIII.

11 Raimund Waltermann in Bernd Baron von Maydell, Franz Ruland, Ulrich Becker, Sozialrechtshandbuch (SRH) (Nomos Verlag 2012) para 7 m. n. 1.

12 Seewald (n 9) art 2 m. n. 3; there is still a discussion about the impact of these guidelines in literature and jurisdiction, and further on: Eberhard Eichenhofer, `Soziale Rechte im Sozialgesetzbuch` (2011) 9 Sozialgerichtsbarkeit 301, 304; Wolfgang Fichte `Die sozialen Rechte in der Rechtsprechung des Bundessozialgerichts - zugleich Replik zu Eichenhofer, Soziale Rechte im Sozialgesetzbuch, SGb 2011 (2011) 9 Sozialgerichtsbarkeit 492-498;

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intention in this article would be to expand the classic notion of the `Social Rights` and focus all readers on some special legal norms out of the `Social Security Code No I`, which contain real `rights`, but also duties – two sides of the same coin.

Usually duties for the institutions of social security administration are rights of the residents at the same time (and also the other way round, duties of the residents are rights of the administration).

It seems important to focus on these basic legal statements. They are sometimes `a little bit` in the background or forgotten as guidelines and borderlines at daily work. In the end, it is about nothing less than a `best practice` in social security administration.

Implementing the social law and providing social services correctly according to the `Social Security Codes No I-XII´ might be one small, but in my opinion important, piece to integrate people into the society.

The hypothesis is: Especially if people believe that they are separated from the mainstream society, that they are no longer `shareholders` of the generated economic success, they may finally opt out from the democratic process. It is all the more important to use the social administration, the `legal´ interface between citizens and the government, to show these people that the law is on their side and will include and not exclude the citizens.

Numerous different and difficult terms and social legal norms intend a very good practice in advising citizens about their duties[13] and first about their rights[14]. A fast and comprehensive treatment of their applications is the way to provide the support of the social welfare state[15] and to communicate the idea of a society based democracy with equal rights and equal duties[16].

Good practice in advising the citizens in consultations and objective treatment of social benefits are an important element for social peace within the society.

Eberhard Eichenhofer, `Bedeutung und Folgen sozialer Rechte des SGB I` (2011) 9 Sozialgerichtsbarkeit 511-513.

13 Exampels: Social Security Code No I art 33, arts 60-65, art 66.

14 Esp. Social Security Code No I arts 3-59.

15 According to Social Security Code No I art 17.

16 Basic Law of the Federal Republic of Germany arts 20 and 28.

In fact, it is not enough having social rights in theory – it is important how these social rights are provided.

The `founder` of the German social (insurance) system, Otto von Bismarck, concluded: `My idea was to convince the working class, or shall I say to bribe them, to accept the state as a social institution that works for them and will take care of them.`

A true sentence, at his time and today as well. Social peace: one important precondition for economic success.

Today we find the guidelines to `convince the working class` in arts 2-59 Social Security Code No I. Now some important rules shall be introduced.

2 THE ASPECT OF `CONSULTING` (ART 14 SOCIAL SECURITY CODE NO I)

2.1 CONTENT

Article 14 Social Security Code No I proclaims: `... Anybody has the right of consultation about rights and duties contained in these Social Security Codes. ...`

The multitude of regulations in social law, especially their interrelation, are overwhelming most of the citizens, not only socially deprived or elderly people[17]. The German Federal Social Court (`Bundessozialgericht´) deduced by `Social State Principle`[18] and the `principle of equity and good faith` as a responsibility by the public social funding agency to support the citizens facing these principles[19]. The citizens should be treated in the best way by showing all possibilities to have the opportunity of using their social rights in the best way[20].

Popular information, for instance on websites or flyers, is not enough at this point (this is a matter of art 13 Social Security Code No I – public information). It is the declared intention of the legislator in art 14 Social Security Code No I that social administration shall offer a detailed consultation focused on solving the

17 Werner Lilge, SGB I Sozialgesetzbuch Allgemeiner Teil (Erich-Schmidt Verlag 2016) arts 13-15 m. n. 1.
18 Basic Law of the Federal Republic of Germany art 20 and art 28.
19 ibid n. 3.
20 ibid. with further references.

individual problems of the individual person who is in need. Everybody has the right of `consultation` about his claims based on the German Social Law[21].

The consultation includes correct, unmistakable, comprehensive and individual information. Moreover, all obvious options open to the citizen that could be identified by a rational civilian shall be presented[22]. All open questions that are relevant for the citizen to make a decision now or in the future, have to be answered.

There is a still unsolved problem which is discussed in literature. This question touches the necessity to advise the citizen with the aim of optimizing the social benefits[23]. That means, for example, it is necessary to advise the citizen in such a way that he will earn a maximum of benefit with a minimum of contribution or, as a second example, how to shelter personal financial assets while applying for basic welfare benefits.

In my opinion, there is no doubt about the correct answer: art 2 Social Security Code No I clearly states the so called `principle of effectivity`[24]: social rights have to be offered as extensively as possible[25]. This leads to the conclusion that advising has to include such calculations of possibilities to realize this principle. It is the idea of empowering people to make their own informed decisions. But there are also borderlines. It does not mean spending social benefits like pouring them from a `watering can`. It would be illegal to take arbitrary interpretation of a legal right or claim[26].

2.2 RIGHT WITHOUT A LEGAL CONSEQUENCE?

The right of consultation is a real and valid legal claim[27]. There is only a `small´ problem: if this right is denied, there is no legal consequence written down in art 14 SGB I. Especially the legal figures out of art 34 GG and art 839 German Civil

21 Attention: It does not mean claiming something – it is only about the consultation.
22 Lilge (n 17) art 14 m. n. 17 with further references.
23 In German: `Optimierungsberechnungen`, cf. also Lilge (n 17) art 14 m. n. 34.
24 In German `Effektuierungsgrundsatz, Peter Mrozynski, SGB I Sozialgesetzbuch Allgemeiner Teil (4th edn, CH Beck 2010) art 2 m. n. 15.
25 Seewald (n 9 art 2 m. n. 10.
26 Example: it is impossible to insure people at the pension system without a legal entitlement.
27 Mrozynski (n 24) art 14 m. n. 1.

Code (´Bürgerliches Gesetzbuch`) are not directly fitting. To solve that problem, jurisdiction[28] developed a special solution in social law practice.

2.3 THE RIGHT TO REINSTATEMENT IN THE GERMAN SOCIAL LAW

The German jurisdiction answered this problem with a legal institution called `Sozialrechtlicher Herstellungsanspruch`[29]. This solution states that the administration of social law has to rehabilitate any citizen who got a wrong or incomplete consultation and therefore has a personal disadvantage or missed a claim[30]. But note that this legal institution will not replace the legal institution of `restitutium of integrum` out of art 27 Social Security Code No X (`SGB X`)[31].

The requirements are:

- Holder of a social right.
- Serious violation of duties by the social administration (wrong consultation).
- Personal disadvantage of the citizen due to the violation.
- The violation / disadvantage can be eliminated by lawful action.

But there is a problem: the citizen has to give evidence due to the violation and the causation between violation and disadvantage.

A possible way to solve this problem might be a detailed written protocol.

2.4 CONCLUSION

The right of consultation transfers the principle of the social state into the legal reality and supports the social rights as widely as possible[32]. In the end, this leads to trust in the public social administration.

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28 Richter des Bundessozialgerichts (eds) BSGE - Entscheidungen des Bundessozialgerichts (Carl Heymanns Verlag 2010) 71,17,22.

29 Kai Grötschel, Der sozialrechtliche Herstellungsanspruch (Verlagshaus Monsenstein und Vannerdat 2015) 1.

30 Steinbach (n 8), K para 2 m. n. 41.

31 Id. para 14 m. n. 23.

32 Lilge (n 17) art 14 SGB I m. n. 3.

3 APPLICATION AND EXECUTION OF SOCIAL BENEFITS ACCORDING TO ARTS 16 AND 17 SOCIAL SECURITY CODE NO I

3.1 APPLICATION (ART 16 SOCIAL SECURITY CODE NO I)

Applications have to be filed at the competent social administration.

But they will be also accepted by all other social administrations in Germany, by all municipalities and by all officially authorized German administrations in foreign countries. Applications received at a not competent administration have to be passed on to the competent social administration. So if there is a deadline for an application, it is also possible to meet it by giving the application to a not competent social administration or municipality. The social administrations are obliged to treat applicants to supply precise and comprehensive applications.

There is almost a direct causal connection to the right of a consultation: the consultation is the basis for a precise application.

The applications do not have to have a special form. The whole administration procedure in social law shall be free of any special formalities. It shall be as easy as possible. But nevertheless, applications and forms shall always lead to a structured and effective processing in public administration. For this, accuracy and comprehensiveness are necessary, even if the failure to do so does not mean that the application is not effective[33].

The citizens will have several duties and obligations during the administrative process which will be discussed later on[34].

3.2 EXECUTION OF SOCIAL RIGHTS ACCORDING TO ART 17 SEC 1 SOCIAL SECURITY CODE NO I

The social administration has to process social benefits on time, comprehensively and quickly. Social services and social facilities and infrastructure have to be served on time and adequately.

33 Lilge (n 17) art 16 m. n. 18, 20.
34 Aspect: IV obligation to cooperate for the citizen.

Providing social benefits does not only include the monetary aspects[35], but also other goods and services such as medical care, especially at provincial level. The legislation calls for initiative by the social administration to realize the guidelines of the Social Security Code. It is a mandate to provide services and non-monetary benefits[36].

The right to quickly process applications and payment of social benefits correlates with the provision of art 42 Social Security Code No I. If there is a prolonged time period until an application is processed, an advanced payment can be paid by the social administration. If the problem is caused by a dissent of competence, the social administration that received the first application can process this advanced payment. Advanced payments always have to be granted, if claimed by the citizen. The link between consultation and processing the application is obvious.

4 OBLIGATIONS AND DUTIES OF COOPERATION BY THE CITIZEN ACCORDING TO ARTS 60-64 SOCIAL SECURITY CODE NO I

4.1 DUTIES OF THE APPLICANTS

Citizens applying for social benefits have to cooperate in different ways[37].

Citizens and the social administration have to `protect` the difficult interests of each other.[38]

On the one hand, the social administration has to investigate all positive and all negative legal requirements for social claims according to art 20 Social Security Code No X.[39] This simply means that the social administration has to investigate and provide information that may go further than the citizens initial claim in the application (principle of official investigation).

But nevertheless, with evidence, the residents have to first provide all basic facts necessary to process the application.

35 Lilge (n 17) art 17 m. n. 11.
36 ibid, art 17 m. n. 30.
37 Social Security Code No I arts 60-64.
38 Lilge (n 17) art 60 m. n. 2.
39 In German `Amtsermittlungsgrundsatz` or `Untersuchungsgrundsatz`.

To bring the principle of art 20 Social Security Code No X into effect, the applicants first have to serve all related facts. Furthermore they have to appear in person, take part in medical investigation and treatment. They have to cooperate in all necessary measures with the social administration[40]. These duties and obligations of cooperation are extensive[41].

These duties are concluded regularly with the end of the administration process. But especially in all cases with permanent social benefit, duties continue to be effective. These obligations are the other side of the coin[42].

4.2 BORDERLINES OF DUTIES

The legislation about this is quite abstract. According to art 65 Social Security Code No I duties of cooperation are not in effect, if they are in an incongruent relationship to the claimed social benefit or in case of other important reasons.

Especially if the social administration can fulfil the duty of serving information and facts easier or faster, the applicant does not have to fulfil his obligation. For instance, if the research in a special archive is easier for the administration, the administration has to collect the information by itself. Also in the case that these obligations may lead to injuries of life or body or if they are very harmful in other ways, the applicant is not asked to fulfil his duties. The example of amputation a part of the body might be impressive. After injuries sometimes a finger becoming crippled or stiffening. Because of that fact the whole hand can´t be used in the right way. The amputation of this crippled finger would help to getting back a kind of mobility at this hand. The applicant does have not to agree with in such a surgery.

In addition, all information leading to possible danger of criminal prosecution of the citizen does not have to be disclosed to the social administration.

4.3 LEGAL CONSEQUENCES IN THE CASE OF VIOLATING COOPERATION DUTIES

If the person claiming social benefits violates the duties of cooperation according to art 60 and art 64 Social Security Code No I , the social administration can

40 Social Security Code No I arts 60-64 sec 1.

41 Lilge, `SGB I Sozialgesetzbuch Allgemeiner Teil` (n 18) art 60 m. n. 4. 42 In German `Mitwirkungspflichten´ – duties of cooperation.

refuse or withdraw the social benefit until the citizen cooperates. It is necessary to notify the citizen in writing while setting an appropriate deadline to cooperate adequately.

4.4 LEGAL CONSEQUENCES IN THE CASE OF MAKING UP FOR COOPERATION

According to art 67 Social Security Code No I it is at the discretion of the social administration to provide the social benefit after the necessary cooperation.

4.5 WEAK DUTIES – WEAK STATE?

According to art 67 Social Security Code No I it is at the discretion of the social administration to provide the social benefit after the necessary cooperation.

On the one hand, especially in public media, we can read or hear about malpractice or abuse of social claims. But this is not a problem of having a lot of rights and only small duties. Each law might have small leaks. The legislation is asked to close these leaks in a way fitting to the German constitution and European legislation. At the end, it might be a question about how much social security will we offer. It is no weakness to offer social security in an easy and open way. But it is a sign for a very powerful state and a powerful social security system.

5 CONCLUSION

Only providing social benefits seems to be not enough. The way that social security is provided also matters. The German legislator, 40 years ago, had a very clear idea about this `how to` provide social benefits. It is necessary to bring these general rules back to mind, again and again, they are even not `old fashioned`. These basic principles are much more: a base for our democratic and social state. They are an instrument of participation in a democratic state.

The public social administration often has to deal with the poor side of the society, with people who are really in need of help. Facing new formidable social challenges in Germany and Europe it seems to be very important bringing these ideas into effect, at least to create social compensation and social peace in society.

In the end, these rules from the German social security law can be used as general ethic rules or guidelines by anybody as well as in all branches of the executive power. It can be claimed to be a kind of a `blueprint' for `best practice' in administration. Why? Because public administration is always the showcase for a well-functioning state and its capacity to act and provide `good governance`.

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SOCIAL RIGHTS AND OBLIGATIONS: THE RELATIONSHIP BETWEEN CITIZENS AND THE ADMINISTRATION OF SOCIAL LAW IN POLAND

1 INTRODUCTION

The subject of human social rights[1] and the relationship occurring between the social rights to which a human being is entitled to and the obligations of the administration in the scope of their achievement constitute issues of special significance in contemporary Europe[2]. There are many reasons for this. Most of all, this results from historical experiences of European countries showing a certain regularity according to which, each time, the cause of social tensions and revolutionary outbreaks in the countries was fighting not only for freedom but also decent conditions of existence[3]. 'Awareness of this regularity's existence as well as the fear of the interstate social conflict of economic origin made the constitutions of European countries, established after the First World War, offer a wide range of civil rights, including the category of social rights'[4]. On the other hand, guaranteeing social rights and their development in law became a rule after the Second World War with the noticed necessity of providing people with minimum living standards in order to arrange the harmonious development of a Europe wrecked by war. Then, social rights became a subject of regulations in the international law on a larger scale[5].

1 Social rights are usually ...
2 Włodzimierz Anioł, Polityka socjalna UE (Wydawnictwo Sejmowe 2003) 5.
3 Paweł Kuczma, 'Prawo do pomocy społecznej' in Mariusz Jabłoński (ed), Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym (E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego 2014) 619.
4 ibid [own translation from Polish].
5 ibid.

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Undoubtedly, among the instruments of international law referring to social rights and issued after the Second World War, the Charter of the United Nations is of special significance. Its provisions have emphasised the relationship between the observance of human rights, including social rights, and the assurance of the world's peace. Internationally, the significance of the category of social rights is also visible in, enacted in 1966, the International Covenant on Economic, Social and Cultural Rights as well as the European Social Charter in which the idea of universal social rights occurs, and it is found in, among others, art 12 and 13 of the Charter[6]. On the other hand, as far as European legislation is concerned, the right to social security and social assistance has been confirmed in the Charter of Fundamental Rights of the European Union[7].

2 THE CONCEPT OF SOCIAL RIGHTS AND SOCIAL BENEFITS IN POLAND

In Poland social rights are usually considered as constitutional rights[8]. With regard to social constitutional rights, they are quite often considered to be personal rights. Particular laws provide further specification in this scope. Therefore, social rights may, and in many cases do, constitute the grounds for claims advanced by individuals against the state for attaining these rights. The category of social rights is in a close relationship with the notion of social benefits; that is, the benefits through which a state aims to

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... included in the human rights of second generation in the literature on the subject. They are understood as the so-called positive rights and named 'indicative rights' creating the sphere within which the state is ordered to act in order to fulfil them. When discussing the problems of social rights, one also considers the fact that these are specifically related to freedom and human personal rights. This relationship may be presented in the way that the achievement of social rights is a condition of using other rights and freedoms. This is the reason for an instrumental nature of social rights in relation to personal rights. However, lately, the former have started to perform an autonomous function. The fact that an autonomous function is attributed to social rights results from the process of expanding their range and the related state benefits. This phenomenon is visible in many European countries, including Poland, where among freedoms and social rights, the right to social security, together with social assistance, is of great significance. Monika Lewandowicz-Machnikowska, Regulacja prawna socjalnego wsparcia dla osób o niskich dochodach (E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego 2013) 73; cf.: Jerzy Oniszczuk, Wolności i prawa socjalne oraz orzecznictwo konstytucyjne (Szkoła Główna Handlowa w Warszawie 2005).

6 European Social Charter established in Turin on 18 October 1961. It was amended by the Protocol amending the European Social Charter, drawn up in Turin on 21 October 1991.

7 Art 34 of the Charter of Fundamental Rights of the European Union [2010] OJ of the EU C 83/389: 'The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.'

8 Cf.: Leon Wiśniewski, 'Pojęcie i konstrukcja prawna praw socjalnych' in Leon Wiśniewski (ed), Podstawowe prawa jednostki i ich sądowa ochrona (Wydawnictwo Sejmowe 1997).

ensure its citizens' social safety[9]. In the science of Polish law, social benefits, through which the state performs its social functions, are generally understood as kinds of gains obtained by an individual from a state or territorial self-government[10], and as all kinds of funds spent on an individual person's or a family's needs[11]. Discussing them in the categories of public goods is also significant here. Social benefits are financed with public funds. Most often, an individual receives them nonequivalently[12], 'giving nothing in return'[13]. However, in the case of some benefits, this quality is subject to exception[14].

3 SOURCES OF SOCIAL RIGHTS AND SOCIAL BENEFITS IN POLAND

The basic source of social rights in Poland is the Constitution[15]. Its second chapter, entitled: 'Human and Citizen's Freedoms, Rights and Duties' includes regulations concerning, among other things, social rights which satisfy the needs of an individual's economic security. The constitutional regulation of social rights causes the reduction of state's role in developing regulations of social benefits[16].

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9 Iwona Sierpowska, 'Bezpieczeństwo socjalne jako kategoria dobra publicznego' in Marta Woźniak, Ewa Pierzchała (eds), Administracja dóbr i usług publicznych w Polsce (Diffin 2013) 87.

10 For instance, Grażyna Szpor, 'Korzystanie z dóbr publicznych' in Irena Lipowicz, Zygmunt Niewiadomski, Kazimierz Strzyczkowski, Grażyna Szpor (eds), Prawo administracyjne. Część materialna (Lexis Nexis 2004) 156.

11 According to the concept of Herbert Szurgacz, formulated in the 90s of the 20th century, social benefits have common legal attributes and perform similar functions. According to this author, introducing them to the Polish legal order after 1989 was an effect of emergence of new social problems or intensification of the existing ones and that made one method of protection, recognised as irrational, be replaced with other method. This opinion, despite the unquestionable development of social rights and the related benefits, is still valid. Regardless of the changing names, content and replacement with other types of benefits or changing conditions and ways of their granting, social benefits have been still performing the same social function and have remained important to people using them. Herbert Szurgacz, Wstęp do prawa pomocy społecznej (Wydawnictwo Uniwersytetu Wrocławskiego 1992) 84 et seq.

12 Barbara Rysz-Kowalczyk (ed), Leksykon politologii społecznej (Aspra JR F.H.U. 2002) 208.

13 Judgment of the District Administrative Court in Warsaw of 13 June 2006, I SA/Wa 79/06, CBOSA.

14 Iwona Sierpowska, Pomoc społeczna jako administracja świadcząca (Wolters Kluwer 2012) 199.

15 The Constitution of the Republic of Poland of 2 April 1997 (Dziennik Ustaw – Official Journal of Laws of the Republic of Poland (hereinafter: Dz. U.) 1997, No 78, item 483 as amended), hereinafter: the Constitution.

16 As Monika Lewandowicz-Machnikowska claims social benefits in Poland 'include (...) the right to social protection [thus, also to social assistance, DC] and other rights provided for by the Constitution as state's obligations, as the obligation to take actions within the scope of providing special protection in securing livelihood for the disabled, the obligation of pursuing the policy supporting the satisfaction of housing needs, the right of families in

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The Constitution defines the extent of the ordinary legislator's discretion in this scope. Although, undoubtedly, the contents of legal regulations concerning social benefits are determined by the level of the state's economic capacity, their inclusion into the Constitution excludes them from an ad hoc political process of making decisions and imposes priorities in pursuing a social policy[17]. A hint concerning the method of pursuing a social policy and developing social law in legislation can be found in the decision of the Constitutional Tribunal of 23 March 1992, K 6/91[18], according to which the constitutional legislator, by legislating the citizens' right to the state's assistance through social insurance and assistance, allowed the legislator some leeway within the scope of its completion, namely, in relation to the definition of types of social benefits, forms of assistance, conditions of their acquirement and loss, amounts, granting procedures, etc. The only 'restraint' the legislator experiences in this scope is an obligation of development of social insurance referring also to 'extension' of different forms of social assistance[19].

The fact that, in Poland, there are multiple laws regulating social benefits[20] is worth adding here. The Polish legal system within the area of social security is still (especially in comparison with the German system) somewhat unstructured.

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a difficult financial situation to a special assistance of the public authorities, the right to individual assistance for students in connection to providing equal access to education, as well as, the right of a child deprived of parental care to the care and assistance of the public authorities. When accepting the aforementioned standpoint of M. Lewandowicz-Machnikowska, one should simultaneously emphasise that the range of the individual's rights of a social nature is subject to frequent amendments. It is impossible to confine such living matter forced to react to changing social needs in one legally limited catalogue of benefits related to social rights. The social sphere of activity of a state and its administration is evolving and showing far-reaching quantitative and qualitative development within the scope of tasks referring to individual's social needs. Therefore, the types of social benefits have not been listed in the Constitution. This would be both impossible and misguided. Lewandowicz-Machnikowska (n 1) 59.

17 Lewandowicz-Machnikowska (n 1) 64.

18 The mentioned judgment referred to art 70 sec 1 of the invalid Constitution of the Republic of Poland enacted by Legislative Seym on 22 July 1952 (Dz. U. 1976, No 7, item 36 as amended).

19 The decision of the Constitutional Tribunal of 23 March 1992, K 6/91, (1992) OTK ZU item 3.

20 In Poland, the individual's social rights are expanded in detail in numerous laws whose provisions are often dependent on the changing state's policy in the domain of security of citizen's social rights. See: Béla Tomka, 'Social Policy in East Central Europe: Major Trends in the 20th Century' in Alfio Cerami and Peter Vanhuysee, (eds), Post-Communist Welfare Pathways: Theorizing Social Policy Transformations in Central and Eastern Europe (Basingstoke: Palgrave Macmillan 2009) 17-34; Mitchell A. Orenstein, Martine R. Haas, 'Globalization and the Future of Welfare States in the Post-Communist East-Central European Countries' in Miguel Glatzer, Dietrich Rueschemeyer (eds), Globalization and the Future of the Welfare State (University of Pittsburgh Press 2005) 131-151.

There are many legal instruments binding in Poland providing regulations on social benefits to which classification might be a challenge[21]. These instruments fall within different domains of law: social security law, social law or administrative law. However, it seems that associating them with the sphere of administrative social law is the most appropriate; namely, these instruments involve social regulations and the administration's activity focused on tasks related to the provision of material living conditions in a society, through satisfying certain needs or creating specific social tools[22]. Nevertheless, this approach does not exclude either obvious relations and merging of different domains of law, or the possibility of including social benefits used to improve the existence of an individual to other domains of law. This shows the interdisciplinary character of the discussed issue and its numerous relationships with administrative law and the administration's tasks towards citizens.

4 THE RIGHT TO SOCIAL ASSISTANCE AS ONE OF THE INDIVIDUAL'S SOCIAL RIGHT IN POLAND

The right to social assistance is one of the key social rights of the individual with regard to Polish law[23]. It was derived from art 67 sec 2 of the Constitution of the Republic of Poland and elaborated in the Social Assistance Act of 12 March 2004[24]. Regulated by its provisions, social assistance is an institution of the state's social policy aimed at enabling individuals and families to overcome difficult life situations which they cannot overcome themselves solely by the use of their own powers, resources and abilities[25]. The essence of social assistance financed with public funds comes down to satisfaction of only basic needs, that is, those with which one maintains the minimum of human living standards[26].

21 Lewandowicz-Machnikowska (n 1) 28.

22 Jan Boć in Jan Boć (ed), Nauka administracji (Kolonia Limited 2013) 234. See also.: Tadeusz Kuta 'Zaspokajanie potrzeb socjalno-bytowych i oświatowo-kulturalnych obywateli' in System prawa administracyjnego, vol IV (Ossolineum 1980) 111.

23 Adam Błaś, 'Zagadnienie zakresu zadań socjalnych administracji publicznej we współczesnym państwie liberalnym' in Małgorzata Giełda, Renata Raszewska-Skałecka (eds), Administracja publiczna wobec wyzwań i oczekiwań społecznych (E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego 2015) 18.

24 Polish Social Assistance Act of 12 March 2004 (Dz. U. 2016, item 930). Further: Social Assistance Act.

25 Art 2 sec 1 of Social Assistance Act.

26 Sierpowska (n 9) 83.

In the Social Assistance Act, the state determines the limits of its obligations towards the citizens[27] within the scope of social assistance. Here, one should emphasise that the mentioned act is a legal regulation of the so-called social assistance *sensu stricto*. Simultaneously, the Social Assistance Act is not a lex specialis act in relation to other legal acts governing other forms of social benefits than those provided for in the Social Assistance Act. The Polish social assistance is characterised by diverse and coexistent benefits organised with an administrative apparatus composed of public administration authorities and non-public bodies. Within this system, there are the specialised service providers led by social workers who are direct task executors within the area of social assistance[28]. Social assistance benefits are financed by public resources[29].

The ground rule of Polish social assistance is the principle of subsidiarity provided for by art 2 sec 1 of the Social Assistance Act[30]. This is compatible with Council Recommendation 92/441/EEC of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems, which unequivocally formulates the principle of subsidiarity of social assistance benefits[31] meaning a ban on doing things for an individual (family) when he can cope with the situation on his own[32]. Within the Polish legislation, the principle of subsidiarity in social assistance is related to the area of legal regulation concerning the division of tasks and competences between bodies of public authorities in the state (that is, between bodies of territorial self-government and governmental administration) and is of considerable significance for relationships taking place between the public administration and an individual[33].

Here, one should note a similarity occurring between the Polish and German social assistance systems. According to S. Nitecki, social assistance in Germany

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27 Sierpowska (n 14) 355.

28 Alina Miruć, 'O istocie pomocy społecznej' (2006) 4(5) Administracja. Teoria. Dydaktyka. Praktyka 39-40.

29 ibid 40.

30 Karolina Wrona, Zasada subsydiarności w sprawach o świadczenia z pomocy społecznej w praktyce Naczelnego Sadu Administracyjnego (2004) 4(16) 16 et seq.

31 Herbert Szurgacz, 'Regulacje prawnomiędzynarodowe w zakresie pomocy społecznej' in Bernd von Maydell, Tadeusz Zieliński (eds), Ład społeczny w Polsce i Niemczech na tle jednoczącej się Europy. Księga pamiątkowa poświęcona Czesławowi Jackowiakowi (Wydawnictwo Polsko-Niemieckie 1999) 513.

32 Józef Jończyk, Prawo zabezpieczenia społecznego, ubezpieczenia społeczne i zdrowotne, bezrobocie i pomoc społeczna (Zakamycze 2001) 394.

33 Alina Miruć, 'Zasada pomocniczości w prawie pomocy społecznej' (2008) 3 Administracja. Teoria. Dydaktyka. Praktyka 28.

constitutes a foundation system for social security, playing a part of the so-called lower net picking up the cases which 'have fallen through the mesh of the upper net'. One of the social assistance tasks in Germany is providing support in particularly difficult situations for everyone who has not used it on accounts of special systems of social security and assistance in personal development, e.g. in relation to the disabled or maladaptive[34]. In many regards, this understanding of social assistance is also adopted in Poland.

5 SOCIAL ASSISTANCE BENEFITS ACCORDING TO THE SOCIAL ASSISTANCE ACT

With regard to social assistance benefits, it should be emphasised that the Social Assistance Act in its art 36 divides them dichotomously into cash and non-cash benefits[35]. The catalogue of benefits provided for by the Social Assistance Act is relatively developed and diverse and, additionally, each benefit type includes a different catalogue of conditions determining its granting[36]. The cash benefits include (art. 36 sec 1 of the Social Assistance Act): permanent, periodical, single purpose, and special needs allowance, allowance or loan granted to reach financial independence, assistance to reach financial independence and continue education, cash benefits for livelihood and covering costs of Polish language learning for foreigners[37]. Among the non-cash benefits, which are not always classified as social benefits, there are (Art. 36 sec 2 of the Social Assistance Act): social work, funded ticket, health and social insurance contributions, aid in kind including the one to reach financial independence, funeral allowance, specialist counselling, crisis intervention, shelter, meal, indispensable clothing, home care services, care services in assistance centres and crisis accommodation for families, specialist home care services and specialist care services in assistance centres, supervised apartment, stay and services in residential homes, assistance in obtaining proper accommodation conditions including a supervised apartment, assistance in obtaining employment, in-kind assistance for persons supported for independent living.

34 Stanisław Nitecki, Prawo pomocy społecznej w polskim systemie prawnym (Wolters Kluwer 2008) 31.

35 Pursuant to art 7 of the Social Assistance Act, these benefits are granted, among others, due to poverty, orphanhood, homelessness, unemployment, disability, long-term or severe disease, domestic violence, the need of protecting victims of human trafficking, the need of protecting motherhood or families with many children.

36 Cf. Wojciech Maciejko, Instytucje pomocy społecznej (Lexis Nexis 2008) 67-204.

37 Sierpowska (n 9) 87.

When describing benefits provided for by the Social Assistance Act, it should be distinctly stressed that the aforementioned catalogue of benefits displays adjustment to legal solutions adopted in the EU. Their manifestation is provision of the right to social assistance in relation to the EU member states' citizens and foreigners meeting requirements defined by the Social Assistance Act, right to cash assistance for foreigners as well as provisions concerning benefits as social work, career counselling and crisis intervention[38]. Apart from that, the structure of benefits subject to regulations of the Social Assistance Act satisfies the requirements of aforementioned Council Recommendation 92/441/EEC of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection systems[39].

6 SOCIAL BENEFITS IN POLAND OUTSIDE THE SOCIAL ASSISTANCE ACT

However, as mentioned previously, the social benefits system in Poland does not include the benefits provided for by the Social Assistance Act solely. It is much more developed and it is not regulated by a single legal instrument. Benefits from outside the Social Assistance Act are very diverse. The facts distinguishing them from the benefits included in the Social Assistance Act are, among others, that they are granted for the purpose of providing specific support for individuals or families, and that the principle of subsidiarity, essential to the Social Assistance Act, is not applicable here. Moreover, these benefits, in contrast to many benefits from the Social Assistance Act, involve a claim[40]. These are granted when a person meets the particular criteria laid down by the laws. In the science of law, these are classified as social assistance *sensu largo* or social support assistance[41].

Among the social assistance benefits in their broad sense, especially significant are those focused on supporting a family. According to art 71 sec 1 of the Constitution 'the State, in its social and economic policy, shall take into account the good of the family' , and also 'families, finding themselves in difficult material and social circumstances [...] shall have the right to special assistance

38 Sierpowska (n 14) 25.
39 Szurgacz (n 11) 515. This remark was made in relation to the Act of 27 November 1990 on social assistance. However, this can be also referred to the Social Assistance Act.
40 Lewandowicz-Machnikowska (n 1) 27.
41 For instance Monika Lewandowicz-Machnikowska, Stanisław Nitecki, and, lately, Iwona Sierpowska.

from public authorities'. This provision expresses one of the most significant state's obligations towards the citizens, namely, the obligation to actively pursue pro-family social policy aiming at supporting families in difficult material and social situations[42]. The manifestations of respecting the constitutional norm are regulations dealing with social protection of a family in law. Therefore, Poland has a relatively developed catalogue of benefits focused on supporting poor families.

In this scope, a relatively new social benefit in Poland is a childsupport benefit introduced by the Act of 11 February 2016 on state aid in raising children[43]. The aim of this benefit is partially taking-over of costs related to raising a child, including taking care of him/her and satisfying his/her life's needs[44]. This benefit is due in the amount of PLN 500 a month, regardless of family income and each second and subsequent child is entitled to it until he/she turns 18. There is also a possibility of receiving this benefit for the first child. This is possible when the family income per person does not exceed PLN 800 a month whereas the Council of Ministers may, by way of regulation, increase these amounts taking the projected general annual average consumer price index adopted in a budget act for a particular calendar year into consideration.

Despite many advantages of the child-support benefit, when one considers the fact that the range and amount of social assistance for citizens should also take into account financial possibilities of the state, it raises doubts in the context of not including its amount to the income entitling an individual to receive cash benefits from the Social Assistance Act[45]. Further doubts are raised by the regulation of art 5 sec 3 of Act on state support in raising children, according to which the first child is entitled to this benefit when family income per person does not exceed PLN 800 (in the case of the family raising a disabled child it is PLN 1.200). Taking the principle of social justice[46] into consideration, this means that a family or a single parent of one child will not receive the child-support benefit if their income exceeds the amount of PLN 800 by few groszes. On the other hand, a person or a family raising more than one child will receive this

42 Karolina Stopka, Zasada subsydiarności w prawie pomocy społecznej (Diffin 2009) 148.

43 The Act of 11 February 2016 on state aid in raising children (Dz. U. 2016, item 195). Hereinafter referred to as: Act on state support in raising children.

44 To a certain degree it corresponds with a family allowance.

45 Art 8 sec 3 of the Social Assistance Act.

46 Cf.: John Rawls, Teoria sprawiedliwości (PWN 1994) passim; Friedrich A. Hayek, 'Fikcja sprawiedliwości społecznej' in Teksty liberalne (DiG 1993), passim; Zygmunt Ziembiński, O pojmowaniu sprawiedliwości (Instytut Wydawniczy Daimonion 1992).

support even when their income exceeds PLN 800 even several times. Undoubtedly, the current solution in this scope requires specific amendments to the act on state support in raising children concerning the conditions of granting the childsupport benefit to single parents and families raising one child.

The system of Polish law, apart from the child-support benefit, offers other legal regulations dedicated to the social protection of a family which encourages starting a family, protects it against discrimination, provides it with proper medical care and, finally, provides it with financial support, and this especially concerns families with low incomes, large families and those raising disabled children[47]. Most of all, this is family allowance aimed at a partial take-over of costs related to raising a child[48] and supplements to the family allowance[49]. Apart from the family allowance and supplements to it, the Polish law provides different kinds of carer's benefits. The aim of these benefits is 'partial taking-over of costs related to taking care of an old or disabled family member'. These benefits include attendance benefit and attendance allowance: the former is granted to partially take over the costs resulting from the necessity of providing care and assistance to another person in relation to his/her inability of leading an independent life, and the latter due to resigning from job or other paid employment. Apart from that, the Polish law also provides assistance to single parents. This support is granted on the basis of state maintenance payment system regulated by the Act of 7 September 2007 on supporting individuals entitled to maintenance payments[50]. The state support for individuals finding themselves in a difficult financial situation due to their inability of enforcing maintenance payment results from the constitutional principle of subsidiarity which imposes an obligation upon the state of supporting poor people who are unable to satisfy their needs independently and do not receive due support from individuals liable for maintenance payment. This support should not be

47 Sierpowska (n 14) 211.

48 Family allowance is aimed to partially taking over of costs related to supporting a child. Parents, one of the parent, children's legal and actual guardian as well as a student are entitled to the allowance and supplements to it. Cf. art 4 sec 1 of Act of 28 November 2003 on family allowances (Consolidated text Dz. U. 2015, item 114 as amended). Hereinafter referred to as: Act on family allowances.

49 These are childbirth supplement, child care leave supplement, supplement for education and rehabilitation of a disabled child as well as supplement for starting a school year, supplement for starting school outside the place of residence, as well as different kinds of supplements for singles and childbirth allowance aid.

50 Act of 7 September 2007 on the assistance of people entitled to maintenance payments (Consolidated text Dz. U. 2016, item 169 as amended). Hereinafter mentioned as: Act on the assistance of people entitled to maintenance payment.

associated with actions focused on increasing liability of people liable for maintenance payment[51].

Apart from the benefits described above, other social forms of state support in Poland are worth adding here. These can be found, among others, in the Act of 13 June 2003 on social employment[52], the Act of 9 June 2011 on supporting a family and kinship care[53], the Act of 20 April 2004 on promotion of employment and institutions of labour market[54], Act of 21 June 2001 on residential allowance[55] (residential allowance), the Act of 7 September 1991 on the education system[56] (school scholarship and school benefit). The mentioned exemplary benefits are very diverse and their legal regulation can be found in numerous instruments and, as such, providing their detailed description would go beyond the frameworks of this article.

7 SOCIAL ADMINISTRATION OBLIGATIONS IN POLAND

Undoubtedly, this vast catalogue of the individual's social rights in Poland is related to obligations of the state and its administration defined in the right to their accomplishment. Development, financing and granting of social benefits are the tasks of the state and public administration authorities acting on its behalf or on the behalf of territorial self-governments. Their enforcement takes place according to the procedure of control over the activity of the government and authorities obliged to their fulfilment. The sanction for a failure to complete them is legal liability of individuals holding public offices[57]. Assigning tasks from the social sphere in the form of obligatory own tasks (in the case of commune), own tasks or commissioned tasks, to territorial self-government authorities

51 Cf.: The Preamble to the Act on the assistance of people entitled to maintenance payment.

52 Act of 13 June 2003 on social employment (Consolidated text Dz. U. 2011, No 43, item 225 as amended).

53 Act of 9 June 2011 on supporting a family and kinship care (Consolidated text Dz. U. 2015, item 332 as amended).

54 It is about the unemployment benefit provided for by art 71 sec 1 item 2c of the Act of 20 April 2004 on the promotion of employment and institutions of labour market (Consolidated text Dz. U. 2016, item 625 as amended). Apart from that, the unemployed may be granted support in form of benefits from the Social Assistance Act, social work or funded ticket.

55 Act of 21 June 2001 on residential allowance (Consolidated text Dz. U. 2013, item 966 as amended).

56 Act of 7 September 1991 on the education system (Consolidated text Dz. U. 2004, No 256, item 2572 as amended).

57 Tadeusz Zieliński, Czas prawa i bezprawia. Myśli niepokorne kustosza praw (Dom Wydawniczy ABC 1999) 127.

prejudges the obligation of their execution. This means that administration authorities cannot cease to execute allowance tasks even despite their unprofitability[58]. The legal obligation of completing the tasks reinforces the social position and security of Polish citizens.

Most of the social benefits in Poland are granted and implemented in communes. This enables one to offer a thesis concerning the existence of a local social administration structure within the entities of territorial selfgovernment. Its functioning and constant development is the result of pursuing the principle of subsidiarity in a social life manifesting itself in the fact that an individual should seek the help of the public authority of his/her place of residence[59]. In Poland, the self-government units are basic entities obliged to execute tasks related with the achieving of the individual's social rights[60], as they are the social administration entities[61]. Assigning the tasks of a social nature to the territorial self-government unit corresponds with the standpoint according to which its 'position (...) as an administration entity providing services have not been questioned in the doctrine (of law - DC] for years. The self-government has been perceived [in it - DC] as a subject of satisfying basic needs within the scope of social assistance, education, preschool or primary school education, but also – referring to the classic construction of Ernst Forsthoff[62] – supplying individuals with water, heat and electricity'[63].

Social administration, when deciding on granting or refusing to grant a benefit, acts within and on the basis of the law. 'The whole [of its - DC] actions (...) is

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58 Cf. Jolanta Blicharz's discussion on the legal structure of a public task. Jolanta Blicharz, 'Zakres znaczeniowy pojęcia zadanie publiczne' (2005) LXXI, Przegląd Prawa i Administracji.

59 Cf. Stanisław Fundowicz, 'Administracja bliska ludziom i bliska ludzi' in Prawo do dobrej administracji (Cardinal Stefan Wyszyński University in Warsaw 2003) passim.

60 Cf. for instance arts 17 and 18 of the Social Assistance Act, art 2 in relation to art 3 item 11 of the Act on family allowances, art 9a of the Act on residential allowances, art 31 in relation to 2, item 9 and 10 of the Act on the assistance of people entitled to maintenance payment, art 29 item 1 in relation to art 2, item 11 of the Act on state support in raising children.

61 Territorial self-government is responsible for executing tasks for the interest of local and regional communities. The catalogues of tasks assigned to a territorial self-government are developed and also includes the tasks of social sphere. Cf. art 7 sec 1 of the Act of 8 March 1990 on commune self-government (Dz. U. 2016, item 446); art 4 sec 1 of the Act of 5 June 1998 on district self-government (Dz. U. 2016 item 814); art 14 sec 1 of the Act of 5 June 1998 on voivodeship self-government (Dz. U. 2016, item 486).

62 Cf.: Ernst Forsthoff, Die Verwaltung als Leistungsträger (Kohlhammer 1938).

63 Irena Lipowicz, 'Samorząd terytorialny jako podmiot administracji świadczącej' (2015) 3 Ruch Prawniczy, Ekonomiczny i Socjologiczny 115.

governed by the law. The same is true for the instruments thanks to which it can operate'[64]. The cash benefits are granted through an administrative procedure with the use of the provisions of the Code of Administrative Procedure[65]. However, there are exceptions to this rule. These concern benefits provided for by the Social Assistance Act as loan, lending for use, funded ticket, crisis intervention, shelter, meal, clothing or funeral. To grant them, the administration uses civil law contracts[66] or factual administrative activities. This results from the nature of these benefits and reasons for their granting.

The fact that social benefits in Poland are granted pursuant to an administrative decision should be assessed positively. The expectations of beneficiaries in their relationships with the administration are focused on protection of their legal interests against unfavourable or illegal actions of the social assistance administration[67]. In order to meet these expectations, the legislator has introduced a vast catalogue of legal measures used in administrative procedures before the entities of social assistance. The 'resources' of legal measures to be used by the social assistance beneficiaries in Poland ensure realisation of the guarantee of these rights' protection. This constitutes a mechanism of multiple functions as: preventive, reviewing, protective and reference functions[68].

8 CONCLUSION

To conclude the above discussion, it should be once again emphasised that the issue of social rights and their accomplishment has a prominent place not only in social awareness but also within the social policy of the state. Most of all, this results from the essence of the discussed category of rights and related benefits through which the state provides its citizens with dignified living conditions,

64 Jerzy Starościak, 'Prawne formy i metody działania administracji' in Teresa Rabska, Jerzy Łętowski (eds), System prawa administracyjnego, vol 3 (Ossolineum 1978) 39.

65 Cf. Małgorzata Jaśkowska, 'Wpływ zmian w k.p.a. na sferę praw i wolności jednostki' in Teresa Górzyńska, Grzegorz Sibiga, Mateusz Błachucki (eds), Analiza i ocena zmian Kodeksu postępowania administracyjnego w latach 2010-2011 (Naczelny Sąd Administracyjny 2012).

66 Alina Miruć, 'Umowy cywilnoprawne ze świadczeniobiorcami w działaniach administracji pomocy społecznej' in Sławomir Wrzosek and others (eds), Współzależność dyscyplin badawczych w sferze administracji publicznej (CH Beck 2010) 110-111.

67 Ewa Pierzchała, 'Standardy funkcjonowania administracyjnych środków prawnych w postępowaniu przed organami pomocy społecznej' in Jolanta Blicharz, Lidia KlatWertelecka, Edyta Rutkowska-Tomaszewska (eds), Ubóstwo w Polsce (E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Cyfrowa. Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego 2014) 121.

68 ibid.

obviously, to the extent that resources allow. Therefore, social rights and the related benefits play a significant part according to the society's perception. The catalogue of social benefits found in Poland is relatively developed and characterised by a certain variability resulting from the fact that the matters of social assistance constitute an element of changing social policy of the state. This lack of permanency of regulations related to social benefits is also influenced by the fact that Polish social law has not been codified. It is difficult to embrace such a variable legal matter depending on the state's changing social policy with a legal instrument of the code's importance. The nearness of social assistance administration in relation to their place of residence is very important to citizens in the context of their contact with this administration. This is an expression of the principle of subsidiarity in a public sphere. However, much more important is attributing the legal obligation of social task execution to the social assistance administration in Poland, as well as creating legal protection of social rights for citizens which is most clearly expressed by their relation with the social assistance administration within the law.

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