

Magistratum legem esse
loquentem, legem autem
mutum magistratum
(The official is the speaker of law, and the law
a silent official)

Introduction

The functioning of the state is not possible without a well-organised clerical structure. In the first state structures we had to deal with officials performing specific functions that could not be fulfilled by the ruler. Of course, as territorial expansion took place, as a result of social and political processes, the number of officials steadily increased, but care was also taken to ensure that their functioning was organised. Thus, the scope of duties was defined, and very often the qualities of character that allowed one to hold a particular office or function were also enumerated. In the genetic phase of state development, it was usually the case that a single official had a wide range of powers and performed a variety of functions. As the state developed, the number of cases increased and thus the duties of officials became more specialised, which naturally increased their number and role. This process has varied from country to country, and so today we have, for example in Europe, many models of public administration, and thus the public service or civil service corps has been shaped in different ways. The main dividing line is between closed systems (French, German) and open systems (English). Nowadays, however, it is inappropriate to speak of model solutions on the example of specific countries, most of them accumulating features of both systems (often with a clear predominance of one of them), hence more and more often in the literature on the subject we find – a mixed – hybrid model. In addition, the ‘national’ models developed are overlaid by a variety of historical, geographical, cultural and social conditions. The civil service is a special type of structure, functioning in the state in order to perform its tasks. It belongs to the executive sphere of the state and is organisationally subordinate to the executive. The special legal status of persons employed in the civil service (public service) corps should allow for relative independence and isolation

from the vested interests of political parties, which does not imply complete separation of the two spheres. The creation of appropriate conditions for the functioning of the service should ensure the professional performance of state tasks. The Polish Civil Service Corps is still in a permanent phase of creation and transformation. There are many reasons for this state of affairs, ranging from the legacy of the previous system, through the lack of political will (or to be more precise, political will does exist, but in terms of subordinating the corps to those currently in power), to the uneducated political culture of the organisation, which young democracies also need to build. Building an efficiently functioning corps is a long-term process, and results should not be expected within 5 years, but rather – 50 years. The process of creating the Polish Civil Service and its permanent transformation is inextricably linked to the alternation of power in successive parliamentary elections. This is undoubtedly related to the inclinations of the political sphere to influence the civil service sphere, attempts at appropriating areas of administrative authority, and a misunderstanding of the role and significance of a politically neutral civil service corps.

At the same time, a thesis should be put forward that the term “process” in the case of the creation of the civil service in Poland is, in the author’s opinion, an abuse. Understood by the term “process” – a course of consecutive and causally linked specific changes¹, it should be noted that in the case of changes in the civil service corps they were undoubtedly not causally linked. Rather, they should be described as chaotic and ad hoc, pursuing current political priorities. Resulting from a concern for the lack of subordination of officials to those currently in power. The key to categorising the changes, apart from timing, is the subsequent parliamentary elections.

It should be remembered that all the transforming countries of Central and Eastern Europe struggled with problems during the establishment of the civil service corps. It is rightly argued in the literature that weak institutional structures and their development problems are dominant features of post-socialist countries (Chrabąszcz *et al.* 2003: 9–20). The legacy of communist policies, centralisation are the main obstacles standing in the way of civil service reforms in countries such as Poland, the Czech Republic or Slovakia. However, as some researchers note in the case of Poland, these difficulties have been exacerbated by traditionally negative attitudes towards public administration dating back to the period of Poland’s partitions 1795–1918 (Majcherkiewicz 2008: 140).

The aim of the monograph is to answer the question of how the Civil Service Corps in Poland evolved after 1996, and in what conditions, political and organisational problems, this evolution took place. The timeframe was set by normative acts and their amendments. Starting with the first Civil Service Act of 1996, through the subsequent ones of 1998, 2006, 2008 and the most recent amendment of the Act of 2015, which

1 The term “process” <https://sjp.pwn.pl/sjp/proces;2508456.html> (accessed 2017/10/18).

came into force at the beginning of 2016. In 1996, the first Civil Service Act was passed and thus began the process of building a civil service corps in Poland after the 1989 breakthrough. During the communist period, the corps did not function and the administration, called state administration, was a uniform system subordinated to the political will of those in power. The premise of the publication and, at the same time, the hypothesis of the research was that, for almost 30 years after the change of the political system, no efficiently functioning civil service corps had been created. The evolution of the civil service was thus going nowhere, becoming hostage to the ongoing political and organisational problems of the Polish state. In fact, attempts at building it came to nothing, due to political infighting and the desire to subordinate civil servants to successive ruling teams. This assertion is undoubtedly demonstrated by successive normative acts, which only changed the principles of functioning of the service. I am not saying that a fully formed corpus can be built in a period of 30 years, however, the foundations can be laid. The first stage in which the corps began to be consistently built was during the 1998 Act (until October 2006). The change of service philosophy in the 2006 normative acts, together with the simultaneous abolition of corps structures, nullified the previous achievements. The normative acts of 1996 and 2006 were in force for too short a time to speak of the existence of a civil service concept on their basis. In 2008, the legislator largely returned to the 1998 solutions and, as a result, between 2008 and 2015 we have another period in which attempts were made to build the corps. The parliamentary elections in 2015 and the alternation of power brought about further conceptual changes in the functioning of the service.

Building the corps will undoubtedly be arduous. It will not be so much the process of setting up the structures that will take a long time, as the process of shaping the principles and instilling behaviours that reflect the idea of service to the state. It can be said with certainty that at this stage no efficiently functioning civil service corps has been developed in Poland. Despite its formal establishment (this is only a preliminary element), there is still a need to shape the standards that apply in the Corps, to develop mechanisms for its effective operation, to ensure political neutrality, observance of the rules of a democratic state under the rule of law, and respect for the principles of official ethics. These elements will not function properly only with precisely constructed legal norms, for which there is also a need for mutual respect of the legal status (differences) of the political and official spheres. There is a need for mutual relations to be established on a partnership basis (with the rules defining administration as an executive sphere being respected) and for mechanisms to be worked out which, on the one hand, inhibit the desire of politicians to exert influence on the civil service sector (politicisation of administration) and, on the other hand, eliminate the bureaucratisation of politics.

I have used a variety of research methods in the book. In the part devoted to the problems of the evolution of the functioning of the administration, I applied a chronological approach to the presented process. In the chapters dealing with the historical

outline of the civil service, I applied a historical approach showing the genesis of phenomena and processes. The method of comparative analysis was also helpful, which I used in the development of the chapter on model solutions in the corps. In the main part of the monograph, I used the institutional-legal analysis method, the comparative method and the content analysis method, which served to establish similarities and differences between the analysed normative solutions. A systemic analysis of the administration subsystem as a whole was also applied. Using quantitative analysis, selected aspects of the functioning of the civil service corps after 1996 were presented. The technique I used in the course of research was the analysis of documents, mainly normative acts, but also statements, reports, political and legal opinions, press articles, scientific articles, book publications and websites. The book is therefore interdisciplinary in nature, presenting the issue of the civil service from various perspectives (mainly political and legal) and at many levels.

The issue of the Civil Service in Poland has been the subject of many publications and studies. Already in the inter-war period, monographs on this topic were published, e.g. (Hekajłło 1924). Two years after the end of the war, a commentary to the Act of 1922 on the State Civil Service was published by (Kościołek 1947). From the 1950s onwards, for obvious reasons, there was no publication on this subject. In the years 1989–1996 justifications for successive drafts of civil service acts were published, as well as materials on the reform of public administration, such as a study by Government Plenipotentiary for Reform of Public Administration (Zonn – Pasternak 1993). Researchers analysing the functioning of the civil service include: prof. E. Ura, prof. T. Liszcz, prof. T. Rabska, prof. R. Herbut, prof. H. Izdebski, prof. M. Kulesza, prof. G. Rydlewski, prof. J. Hausner, prof. W. Sanetra, prof. J. Jagielski, prof. Z. Cieślak, prof. K. Rączka, prof. B. Kudrycka, prof. J. Itrich-Drabarek, prof. T. Górzyńska, prof. S. Mazur, prof. J. Czapotowicz, dr hab. H. Szewczyk, dr hab. K. Gadowska, dr hab. K. Mroczka, dr A. Ferens, dr I. Macek,

After the Act was passed in 1996, few monographs and commentaries on the Act appeared (Cieślak at al. 1998). Publications on the 1996 solutions often appeared when the subsequent Act on the service was in force. The short duration of the legislation eliminated some of the publications as the doctrine began to deal with the new legislation. Most publications were produced between 1999 and 2006, the period during which the 1998 Act was in force. The most well-known ones include the commentary by authors: (Jagielski&Rączka, 2001; Rydlewski 2001; Sinkowska 2002). Subsequent monographs started to appear only after the enactment of the 2008 Act, for example (Szewczyk 2010; Itrich-Drabarek 2010; Drobny at al. 2010; Pryciak 2011; Przywora 2012). At the same time, in the literature we can find publications about the service in a broader context, analysing the corpus in the world, e.g. (Kudrycka 1998; Rydlewski 2007; Śledzińska – Simon 2010). The problem of civil service, both in Poland and internationally, has been repeatedly addressed in collective publications, e.g. (Zuba 2007; Kudrycka 2003; Sanetra 2001; Gadowska 2015; Itrich-Drabarek 2012, 2013; Pastwa 2016).

The Polish civil service was also addressed by researchers from the European Institute of Public Administration (EIPA) in Maastricht, the Netherlands (Bossaert&Demmke 2003; Demmke 2004, 2006; Demmke&Moilanen 2010; Peters&Pierre 2006; Raadschelders at al. 2007). In addition, between 1996 and 2016, a number of continuous publications were published on both Polish regulations and systems in Europe and the world. Numerous publications were published in: *Studia Prawnicze, Pracy i Zabezpieczenia Społecznego* or *Samorząd Terytorialny*. Beginning in 1997, the Civil Service Office began to publish a biannual magazine devoted to the functioning and development of the civil service at home and abroad. Initially it was: *Biuletyn Służby Cywilnej* and then a biannual entitled *Służba Cywilna*. It also published on the functioning of public administration in the broadest sense. When the Office was liquidated, the magazine ceased publication. At the turn of July/August 2009 the Civil Service Department of the Chancellery of the Prime Minister started to publish *Przegląd Służby Cywilnej*, an electronic periodical devoted to the service, which is primarily a collection of information on the functioning of the civil service corps. A number of political and legal opinions on successive laws and the jurisprudence of the Constitutional Tribunal and the Supreme Court are also a source of knowledge.

In general, the state of scientific research on the civil service in Poland is satisfactory, but it is a pity that it does not reflect the actual state of the Polish civil service. Among the works devoted to Polish systemic solutions we will find few cross-sectional and comparative publications, covering the entire period of the corps' functioning.

The publication consists of four chapters devoted to the civil service corps in Poland and around the world. The first chapter discusses the evolution of the role of the state in the context of the functioning of public administration. It characterises the changes taking place in state structures, various concepts of management in public administration, from the Max Weber model to the good governance model and neo-Weberism. The chapter will also include the genesis of the formation of the civil service corps. An analysis of the interrelationship between the civil service corps and the political sphere (administration versus politics) is made.

The second chapter contains a discussion of the development of the Polish civil service in the interwar period, as well as in the period of the People's Republic of Poland. Chapter Three, in turn, analyses the issues surrounding attempts to build a modern corps after the 1989 breakthrough. The premises and conditions are characterised. In the fourth chapter, I made a comparison of normative solutions after 1996, i. e. after the enactment of the first Civil Service Act after the breakthrough of 1989. I characterised the systemic position of members of the civil service corps under the four Acts of 1996, 1998, 2006 and 2008. (together with the 2015 amendment). I analysed areas related to the functioning of the corps: the legal nature of the employment relationship, the analysis and description of organisational structures, the scope of rights, duties and disciplinary responsibility to which members of the civil service corps are subject. I showed the problems and doubts related to the construction of

a modern corps and the concepts of the authorities of the time as regards systemic solutions. The chapter is enriched with statistical analyses of the functioning of the corps after 1996.