Wojciech Drobny

“Transformations of the civil service corps members and self-government employees clerical practices in the Polish law after 1989.”

(Abstract)

Civil service is one of the most important institutions in the law governed country. In terms of specifically Polish legal determinants, the term civil service covers – among other things – the legal status of civil servants and self-governments workers. Precisely these worker categories are acknowledged as the key element in the system of employment relations in public service as they impact directly on the functioning of government and self-government administration. Thus it is the civil servants who are responsible for the realization of government policy (in case of civil service corps members), proper task execution of local and regional authorities (in case of self-governments’ workers). As the direct public tasks executors they decisively impact on the proper, efficient and effective functioning of the state, and what is essential, the recognition of national authorities by the citizens. The importance of those is undisputable. The systemic placement of the civil service between the sphere of political influence and the society, as well as the factual use of the national power by the public functionaries, poses a great risk of abnormalities and abuse. The role of the legislator is to determine the legal situation of the civil service in such a way that the risk of occurrence of irregularities is reduced to the least effect.

The creation of professional civil service, operating on the foundation of axiological objectives of the democratic state is a complex and long-drawn-out process. Polish experiences in this respect are not minute as the origins of the civil service date back as far as the interwar period. Whereas the first civil service practice was established in 1996 and included the regulations clearly inspired by the Polish experience of the interwar period as well as Western-European solutions in this respect. The legislator was in favour of the career system, setting up the service of the public interest. The legislator defined the major aim of the institution establishment as well, whose main objective was to assure in the government administration offices professional, reliable, impartial, politically-neutral execution of the state tasks. Two years later the bill was replaced with another practice. In the light of the 1998 Bill the concept of the institution was adopted. The legislator proposed a mixed model of civil service, which means, that the model comprised elements of career and positions model with the prevailing role of the latter. Another Bill on Civil Service from 2006, in the assessment of the doctrine, ruined former achievements of the Polish legislation in the area of civil

service. The civil service corps existing under the rule of the Bill was stripped of managerial positions. The developed system of civil service organization was liquidated by abolishing the position of the Head of Civil Service and their office. Therefore in 2008 the legal act was aptly rescinded, replacing it with the bill particularly restoring the position of the Head of Civil Service as well as higher positions in the civil service itself. Nevertheless, that legal act also includes major flaws disqualifying itself from positive assessment. Thus, in the period of less than twenty years the subject matter in question has been regulated by four completely different legal acts which violates the foundations of a law governed state and definiteness of law. Such changes, with every subsequent entry of a new practice had negative effect on practical functioning of the Civil Service Corps and at the same time the realization of state tasks.

The legal status of self-government workers was shaped independently of the aforementioned legislative activities. The first practice regulating their legal status was issued in 1990 (22nd March 1990 Bill on Self-government workers), repeatedly altered, remained in force until the Bill on Self-government workers of 21 November was passed. A comparative analysis of the two legislative acts definitely confirms an alarming trend in the existing legislation, the trend of elimination of public elements for the solutions typical of labour code (the example being the removal of the nomination act from the employment catalogue). That phenomenon is not only specific of Polish legal determinants, but appears as well in West Europe conditions. Therefore it is common, but at the same time, in my personal view, it seems extremely dangerous. In reality it is a return to Polish legal solutions of the post-war period which were commonly criticized.

For the extensiveness and multifaceted nature of the studied issues of the thesis it has become necessary to design the framework for the conducted considerations. In terms of historical conditions shaping the Polish civil service, the period after the year 1989 was naturally distinguished. Henceforward new concepts of public administration originated which also affected clerical practices. Nevertheless, for the completeness of the study, the subsidiary reference to the former legal acts was also essential, particularly to the aforementioned Bill of 1922. The legal analysis focused first of all on national ordinary bills.

The necessity of assessment of the correctness of the legal acts has yet resulted in relating to not only political objectives but the international law as well. The study has been supplemented with the analysis of the judicature (both national and international), the doctrine and the documents that appeared in the practice of public administration.

The four chapters of this dissertation contain the assessment of current legal solutions, which is the major aim of this work, paying particular attention to their optimum and correctness (as well as defining the area of mistake committed by the legislator together with their effects and conclusions de lege ferenda). The analysis of international and political legal conditions which pose the legal context for the ordinary national legislator is presented in the first chapter of the thesis entitled "Legal status of civil service corps and self-government workers in international and Polish constitutional law". The author refers to separate international legal systems (EU and European Council) to the extent in which they define the subject of the guarantee of equal access to civil service, the rule of non-discrimination, anti-corruption issues or the catalogue of rights and clerical freedoms. The major focus of studying acts of Polish constitution was particularly the area regulating equal access to civil service, civil service constitualization and positions combining ban. The result of the analysis was the theoretical framework which should determine the legislator activities. At the same time, their identification has let the authour distinguish the pattern which when considered, enabled the assessment of the national legislator practice.

The second chapter of the thesis entitled "Reshaping the models and structure of civil service organization and the catalogue of organization units embracing civil service corps in Polish legislation after 1989." deals with the transformation of the concept of the civil service organization system. As a result of the analysis of individual clerical practices of the civil service corps members, an attempt to classify civil service models which appear in the legislation after 1989 has been made. Simultaneously the author conducted a thorough analysis of the transformation of the status, competence catalogue, and actual significance of civil service units i.e. the Head of Civil Service, Civil Service Council, Civil Service Qualification Commission, Civil Service Appeal Commission; civil service bodies i.e. Director General of the office, Higher Disciplinary Commission; and National School of Public Administration as the institution related to the civil service. The analysis also included the subjective coverage assessment in the light of international and political notions identified in the first chapter.

Another chapter of the thesis is entitled: "The change of goal, axiological objectives and theoretically-legal classification of self-government employees and the transformation of the concept of self-government employee and self-government employer in the light of the Bill on Self-Government workers of 1990 and 2008." That part of the research is entirely devoted to the issues regarding the legal status of self-government workers. The reference has been made to axiological objectives of the current clerical practice, indicating their convergence in this respect with the provisions of the article 153 of the Polish Constitution. The issues of ambiguity of the terms self-

government employer and employee have been analyzed indicating the errors, vagueness and the legislator's inconsistence. The catalogue of possible applicable employment foundations of the self government workers' relations has been thoroughly studied and the legal act has been classified as a concept of administrative law.

In the chapter: "The issue of selected elements influencing the legal status of the members of civil service corps and self-government workers in Polish law after 1989.", the author decided to ponder the issues of great importance for the proper functioning of the service. Due to the extensiveness and complexity of the subject in question as well as the objectives as for the content of Ph.D. theses, it has been necessary to take the risk of selecting the crucial elements shaping the legal status of the civil service which where adopted as the study object. The concept of recruitment to the civil service and its realization practices poses as a reference together with extensive jurisdiction presented. The judicial protection of the civil service applicants has been considered of highest importance parallelly criticizing the lack of appropriate legal acts in this scope. The other area considered essential to ensure appropriate legal model of the civil service and self-government workers is the catalogue of rights and responsibilities of the members of the public service. It has been proposed to classify those elements and to assess their consonance with axiological objectives, lying at the formation basis of the corps. Within that scope, the research of system transformation has been recognized as of very high importance against the background of subsequent practices – the concept of civil service corps members judicial – administrative protection in favor of courts of common law. In order to complement the issues in the chapter the author presents considerations on accepted professional ethics system and disciplinary responsibility of civil service members and self-government workers and assurance of appropriate judicial cognition.

The afore outlined research enabled the formulation of important conclusions. The transformation mechanism of clerical practices of civil service corps members and self-government workers in Poland, in its current form, does not proceed in an intentional, planned or coordinated manner. The resignation from clerical practices as the area of administrative law in favor of labour code is clearly noticeable. The author opposes such practices. The bills of 21 Nov 2008 which were supposed to fulfill great expectations to organize the legal status of the two groups of public administration failed the hopes. In fact the Bill on Civil Service of 2008 constitutes inconsequent return to the legal solutions of 1998, and the bill on self-government of 2008 contains an array of so many errors that it will soon become the subject of subsequent amendments.

The concurrent analysis of the transformation of clerical practices of civil service corps members and self-government workers and particularly the reference in the study to the issues in question, in conjunction with the identification of common areas for the particular practices has let answer the question of the possibility of the formation of the homogeneous clerical corps. Thus in the current legal situation especially with regard to political objectives it seems unattainable. Article 153 of the Polish Constitution does not leave room to cover with civil service corps the organizational structures of territorial self-government (which has been confirmed by the Constitutional Tribunal indicating that the placement of civil service corps within government administration offices and legislating its dependence to the Prime Minister excludes statutory extension of the corps for the national segments which do not belong to government administration, and potential abandonment of the directive would have to have strong support in other constitutional norms). Nevertheless, it is futile not to notice, that thoroughly justified approaches propagating the concept of self-government civil service are presented in the literature. At the root of those concepts there is the assumption that the coverage of self-government workers with a standard specific to the civil service corps accomplishes the right to good administration, which to the same degree – regards the citizens served by the very same government and self-government administration. The author, at the same time, taking into consideration the cited arguments for the self-government civil service formation, claimed that the evolutionary approach of the two statuses of the two groups of public administration workers, is fully legitimate. However the postulated proceedings should be conducted in such a way as not to cause another detrimental for the proper public task execution destabilization of the civil service.