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Public Administration and the Transformation of Civil Service: A Comparative (Law) Perspective

The Civil Service in Poland: its status in the state and its evolution

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L'articolo analizza l'evoluzione del ruolo politico del pubblico impiego in Polonia mediante un'analisi dei suoi tratti caratteristici, come individuati dalla dottrina europea. Lo scritto illustra una prima comprensiva, e già matura, legge sul pubblico impiego, risalente al 1922, a cui si sono poi richiamate tutte le successive normative democratiche, talvolta con spirito polemico. La seconda parte mostra innanzitutto la dissoluzione, a partire dal 1950, di un pubblico impiego altamente professionale, combinata all'introduzione coatta di modelli di stampo russo, con una nomenclatura di partito attiva in un'amministrazione mal pagata, esecutrice di decisioni adottate nel mondo parallelo del mastodontico apparato partitico. La ricostituzione del pubblico impiego non ha potuto aver luogo fino a dopo il 1989 ed è stata portata avanti sotto la forte influenza della dottrina e della prassi francese, incluso il tentativo di creare un apposito istituto di formazione, la Scuola Nazionale della Pubblica Amministrazione. La conclusione dimostra che la normativa attualmente in vigore – che richiede una riforma – abbassa gli standard occupazionali nel pubblico impiego, deflette dal principio dell'accesso aperto e competitivo ai ruoli apicali della pubblica amministrazione e mina il principio di neutralità.

This article analyses the evolution of the political position of the civil service in Poland, against the background of the construction of the civil service recognised by European doctrine. The paper presents the first comprehensive statutory regulation from 1922, with an already mature structure, to which all subsequent democratic regulations referred, sometimes polemically. The second part first shows the destruction after 1950 of the then so professional civil service, combined with the introduction - by force - again of Russian models, including a poorly paid administration, executors of decisions made in a huge party apparatus. The reconstruction of the civil service could not take place until after 1989, and was done under the strong influence of French doctrine and practice, including an attempt to

create a dedicated school - the National School of Public Administration. The conclusion shows that the regulation currently in force, which requires revision, lowers employment standards in the civil service, breaks with the principle of competitive and open recruitment for senior positions and undermines the principle of neutrality.

Summary: 1. Historical background.- 2. The communist period.- 3. Political transformation.

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1. Historical background

The first Polish comprehensive regulation, concerning the civil service, was the Act of 17 February 1922 on the State Civil Service[1]. G. Dostatni pointed to its mature, carefully elaborated conception – despite the fact that the Polish state in its new form, uniting the three parts previously divided between three different countries: Prussia and then the German Empire, Austria and Russia, had only existed for three years, and that with constant wars over new borders[2].
Adopting the principle of a democratic state under the rule of law, a form of parliamentary democracy, made it possible to stand as far apart as possible from the Russian theory and practice of self-rule, learned painfully in the Russian partition during the 123 years of that rule[3]. It must be stressed here that the treatment of officials and other state functionaries in Russia was as far removed as possible from the administrative civilisation of Western Europe. Despite the complex system of hierarchy and subordination, officials there were subjected to systemic violence and treated with contempt. In society, corruption was a tolerated and assumed method of compensating for the abnormally low salaries at the middle and lower levels of official positions by state power. The law was understood neither as a basis for activity nor as a shield for the official against unauthorised orders, but solely as an instrument for the exercise of power, changed and interpreted arbitrarily, including in relation to the state official[4]. In the parts of Poland dominated by Prussia and Austria, the law and the culture of administration were radically different, but here too there was a historical

background that did not allow the models for the Polish state reborn after 1918 to be drawn freely from, for example, the German tradition. Indeed, Poles, as a result of the Germanisation offensive of the Kulturkampf, were already excluded from work and senior civil service positions during Bismarck's chancellorship. At various times this was also accompanied by a ban on the use of the Polish language, so it was difficult to consider Prussian – and then generally German – as a model for the Polish new civil service. In this situation, the strongest positive model turned out to be the Austrian civil service, which after 1918 provided Poland with both a model of codified administrative procedure (1928) and cadres – highly qualified and educated in the Weberian spirit, and often already working in Polish before the First World War[5]. Although at the time the Austrian public administration was already regarded as bureaucratic and overly formal, it still appeared to be a particularly attractive model compared to the experience of the Russian Partition. This gave the Polish civil service, as well as the entire procedural and substantive system law of public administration in the interwar period, a very strong Austrian feature. The cadres of the new state also came from this cultural area, often from the capital Vienna and its Polish diaspora[6]. As S. Grodziski wrote, it was Galicia that «*...bequeathed to Poland's reborn a large cadre of civil servants, people who respected their work and did it well as far as possible, seeing in it not the salvation of the world, but a civic duty*»[7]. The influence of the doctrine of administrative law was much more balanced: indeed, German doctrine was also abundantly drawn upon in theoretical reflection. Because of the concept of the civil service and the system of elite training of civil servants in the state school of public administration, French administrative law doctrine played an important doctrinal role. It was the concept of the civil service that constituted the main area of influence of the French science of administrative law. All these elements contributed to the early creation of a statutory regulation taking into account the Polish specificity[8]. Already the beginning of the State Civil Service Act of 1922 stipulated that the state civil service relationship was of a public law nature, and that it could only be altered, suspended or terminated using public law, and in particular using the provisions of the Act in question Weber's vision of a professional, apolitical administration serving the new state as a whole, regardless of the political upheavals of the day, was very socially attractive[9]. The establishment of an service

relationship took the form of an administrative act in each case – it was an appointment to a position according to a specific category. The law on civil servants was, at the same time, for both the law-making and law-applying bodies, part of administrative law. According to the provisions of the Act, a civil servant could only be appointed as a Polish citizen with an impeccable record, having the capacity to act in law, «*physically and mentally capable of performing the duties of the office, and fluent in spoken and written Polish*»[10]. This last element in the multinational Second Republic, where knowledge of the Polish language – especially in writing – was not evident among national minorities and could be subject to strict interpretation, was a potential flashpoint, valid throughout the interwar period[11]. Also, the question of «*impeccability demonstrated in the future*» was one that could have a reference to the political commitment of the candidate for office. However, involvement in the administration of the partitioned state, or even service in the army of those states, was not regarded as a blemish on the future – pragmatically speaking; the new state tried to draw qualified cadres from available sources; it should be stressed that Russians from the higher social strata, fleeing from the 1917 revolution, also tried to find refuge and work in the Republic; some of them, after accepting Polish citizenship, also found employment in the Polish public service, but this was rather professional administration, such as railway administration. L. Zieleniewski points out that, in an exceptional situation, it was possible to employ foreigners in the civil service after obtaining individual permission from the Prime Minister[12].

There were also a number of prohibitions in official law. A person against whom criminal or bankruptcy proceedings were pending could not become an official. The law defined the concept of an official broadly. It covered ministers, undersecretaries of state, governors, ambassadors. It was also applied to lower official ranks. The service relationship of an official was established by appointment. Appointments to official positions were preceded – as an important element of professionalisation – by a one-year preparatory service, but in exceptional cases the "competent supreme authority" could extend or shorten the one-year preparatory service or even allow an official to be appointed at all without the obligation to undergo preparatory service. As part of the act of appointment, a permanently appointed official took an oath of service in the prescribed form. The 1922 Act presupposed a number of duties, the most

important of which envisaged the obligation to serve the Republic faithfully, to observe strictly the laws and regulations, to discharge the duties of one's office «*zealously, conscientiously and impartially*» and to «*take care*», according to the best of one's will and knowledge, «*of the good of the public cause and to fulfil everything that serves that good and to avoid everything that could be detrimental to it*» – a very broad formulation[13]. The same law draws attention to the criterion of acting in good faith and the introduction of the concept of the "good of the public cause", which required both active action and passive avoidance of infringement or even threat to that good. The civil servant corps, for which stricter requirements were formulated in the framework of service to the state, was also to be given special rights at the statutory level. The Act provided for a number of entitlements to which civil servants were entitled, such as progressively increasing leave, additional, exceptionally socially valuable medical care and the right to a retirement emolument. The provisions of the Act also provided for the transfer of civil servants to other offices and other localities and – a provision familiar to the Civil Service Act 1998 – transfer to inactive status – a provision that was only abolished by the 2006 Act.

The 1922 Act distinguished two categories of civil service employees: civil servants and officers without defining them further. It divided civil servants into three categories according to the criterion of education. The service relationship on the basis of an appointment letter was established after preparatory service[14]. The law contained important anti-corruption regulations – a civil servant, among other things, was not allowed to enter into «*relationships or conspiracies that could interfere with the orderly conduct of the state board or the normal course of business*»[15], during and outside the service, he was to guard the solemnity of his position, conduct himself at all times in accordance with the requirements of official discipline and avoid anything that might diminish the esteem and confidence of the solemnity of his position. In his official relations with his clients, the civil servant was to be «*impartial, courteous and, within permissible limits, to provide advice and assistance*»[16]. Certain elements can already be seen here, recurring many years later in the regulations on the code of good administration and the implementation of the principle of good administration already in the 21st century. It was forbidden for a civil servant to either request or accept gifts offered in connection with his official position, directly or indirectly

to him or his family. It was also prohibited for a civil servant, by exploiting his official position, to confer (or seek to confer) any benefit on himself or his family. An employee was also prohibited from taking on additional employment without the consent of his or her superiors; for breach of duty, an official was liable under criminal, civil, disciplinary and disciplinary law. A civil servant, on the other hand, bore disciplinary liability for official misconduct, and disciplinary liability for official misconduct[17]. Tougher requirements for those employed in the state civil service were compensated for by privileges such as stable remuneration for work, longer holidays (depending on seniority – from 4 to 6 weeks), and leave for health reasons.

The quality of the Polish civil service, built up with such effort from three separate parts in the years 1918-39, is best demonstrated by the fact that further action was taken in the civil service under conditions of the highest threat, during the Nazi and Soviet occupation, within the unique structures of the Polish underground state. During the Second World War in the Polish territories, state structures continued their activities, not only as an armed resistance movement, referred to as the Home Army, but also by recreating fully civilian civil service structures. Thus, the secretly modified administration of social welfare, education, culture and other ministries continued to function[18]. Obviously, the tasks and forms of their implementation had to change fundamentally. Thus, for example, the Ministry of Education, together with its field offices and pre-war local government units, reconstructed under occupation conditions the network of general secondary education, which had been forbidden to Poles during the Nazi occupation, by also running three universities (Warsaw University, Jagiellonian University and A. Mickiewicz University in Poznań). Due to the extremely difficult conditions in Poznań, the latter functioned in Warsaw. The Department of Social Welfare concentrated on helping prisoners and displaced persons, but above all on the professional rescue of fugitives from the Warsaw Ghetto (Irena Sendlerowa, Władysław Bartoszewski)[19]. The Ministry of Culture continued to run publications, provide scholarships to artists in difficult financial situations and take stock of monuments, often before they were destroyed, as in the case of the Royal Castle in Warsaw. These tasks were carried out by pre-war civil servants and those admitted to the civil service, already in conspiratorial conditions, fully subordinated to the émigré parliament and

government in London. It should be noted that any activity, including secret teaching at secondary school level, was punishable by death or concentration camp during this period.

From the statutory duties of a civil servant, which under peaceful conditions focused on strict observance of laws and regulations, conscientious and impartial clerical work, emerged completely new strict requirements of service to the state requiring great courage, acceptance of risk and readiness to sacrifice one's life[20]. The place of the minimalist requirements of "politeness and refraining from corruption" was taken by creativity in carrying out completely new tasks under extremely difficult conditions (department of falsification of birth and baptismal certificates for children rescued from the ghetto and other units specialising in forging official documents). The work was mostly carried out without pay. The officials were expected to take care of their own livelihood, and to perform public service in the remaining time[21]. In some areas of the General government taking up employment in the lowest positions in the basic administration of infrastructure or order, created or tolerated by the occupant, even required the prior consent of the administration of the underground state, which was scrupulously enforced The activity of the Polish civil service during World War II is a particularly positive part of its history, showing how important was the work done before 1939 on esprit de corps , high ethos and appropriate selection for employment in the civil service[22].

2. The communist period

The new communist power, which took over the country as a result of the Yalta and Potsdam agreements and the rigged elections, was thus faced, for the purposes of rebuilding the country, with an experienced, disciplined public administration apparatus, highly qualified and with a high ethos, but definitely at least distrustful of the new regime[23]. Some of this apparatus was subjected to direct repression and imprisoned for years after trumped-up trials. However, many of the officials of underground Poland were the only professional resource available to the new authorities. The new regime did, however, mean the abolition of local self-government in 1950, and a general reduction of the public administration and its cadres to a structure that had been shaped uniformly in all

the conquered countries, following the Soviet, and – looking deeper – Russian model, no longer as a separate civil service corps, but as disposable functionaries covered by the party nomenklatura, i.e. with the necessity of each employment being approved by the ruling party and with managerial positions reserved for party members. The idea was to employ poorly paid people with little prestige. These assumptions and their implementation required an appropriate legal framework[24]. In fact, the filling of senior positions followed the principle of the "party nomenklatura" – a pool of posts at the discretion of the ruling monoparty (PZPR). The Labour Code merely masked this dependence by reducing civil servants to the role of the rank-and-file[25]. The forty-year period of communist Poland, however, contributed to the strengthening of the conviction that senior civil servants are a disposable cadre for the implementation of direct political orders. This pernicious conviction, fatal above all to the quality of administration, legal certainty and the substantive assessment of proposed actions, seemed to have been finally overcome with the political transformation after 1989. After the Second World War there was a complete destruction of the theory and practice of the civil service, the provisions of the State Civil Service Act of 1922 were not explicitly repealed, but ruthlessly adapted to the requirements of the new regime, which rejected the basic principles of the rule of law. Thus, the 1922 Act was formally in force until 1 January 1975, and was replaced by the provisions of the 26 June1974 Act. – Labour Code. This change eliminated – in accordance with the ideology of the new regime which was uniform for all countries dominated by the Soviet Union, including the People's Republic of Poland – the guarantees of independence and political neutrality of state officials. On 16 September 1982, however, the distinctiveness of the regulation of the legal status of employees in public administration returned – the Act on Employees of Public Administration reinstated appointment as the primary form of employment of an official.

3. Political transformation

After 1989, as part of the reconstruction of the rule of law, effective efforts were made to rebuild the professional civil service as well. The great paradox here was a kind of repetition of the dysfunctional systemic situation of 1945, but in reverse:

now the new, democratic power inherited the personnel stock of the public administration, thoroughly transformed in the years 1950-1989 in a spirit of party obedience and low qualifications – and tolerance for corruption – by the previous power. Although it was partly able to try to bring in people once excluded from public service due to their opposition stance or membership of the Solidarity movement, in principle it also had to use – despite general trust - the available personnel resources from the period of authoritarian rule. Fundamental to this process was the establishment in the early 1990s of the National School of Public Administration (KSAP), modelled on the French ENA, and then, as Elżbieta Ura points out, developed in line with European standards, with the enactment of the first Civil Service Act of 1996. However, the relative privileging of graduates of the National School of Public Administration caused a great deal of resistance among the existing cadres of public administration managers.

The Constitution of the Republic of Poland defines only the basic premises of the civil service. In the light of Article 153 of the Constitution of the Republic of Poland, in order to carry out the tasks of the state in a professional, reliable, impartial and politically neutral manner, there is in the offices of government administration a civil service corps, the head of which is the Prime Minister. The Constitution of the Republic of Poland has permanently created the basis on which the civil service model should be built[26]. These foundations include the principles of access to the public service on an equal basis, access to public information about vacancies in the public service, professionalism, integrity, impartiality and political neutrality[27]. These are elements of the principle of good administration, which is becoming a pan-European principle, both of the Council of Europe and of the European Union. Of particular importance is the principle of political neutrality (with impartiality). Apoliticality means renouncing the manifestation of views in service activities. The requirement of political neutrality is formulated differently for different public positions.

The 1996 Civil Service Act, which came into force on 1 January 1997[28], in its solutions was modelled – as Hubert Izdebski points out – on the French civil service system. The law provided that in order to ensure the professional, reliable, impartial and politically neutral performance of the tasks of the state, a civil service was established[29]. The creation of a civil service in local government had already been discussed before, but both in the 1990s and during the 1998/99

reform period, the local government civil service remained in the realm of discussion[30]. Only some elements of it have been introduced, such as the preparatory service. It now seems reasonable, in an environment of widespread nepotism and biased central government funding, to return to the debate on the idea of a separate local government civil service – of course with a different structure and greater discretion for local government bodies than in the case of the state civil service.

The civil service corps was made up of employees hired under this Act. The employment relationship was established on the basis of appointment for an indefinite period of time, and in cases provided for by the Act – for a fixed period of time. Appointments were made on behalf of the Republic of Poland by the Head of the Civil Service. The priority prerequisite for employment in the civil service was possession of higher education. The law established four categories of civil servants, the first of which was that of persons able to occupy positions of higher managerial rank, characterised in particular by the ability to lead complex human teams and make decisions, creativity, the ability to manage financial and material resources and information, having a university degree, knowledge of at least one foreign language, and at least seven years of work experience, including four years in managerial or independent positions.

The categories of civil servant in the concept and construction of the Act categorise official positions, and from the perspective of a civil servant determine the system of remuneration, advancement or punishment, while in the sphere of the creation of a professional, apolitical and efficient corps of civil servants of the state, they specify on the one hand the substantive prerequisites for the selection of candidates for the civil service, and on the other hand ensure the realisation of the objectives of the Act – universality and equality in access to the civil service for citizens[31]. The law provided a framework for the organisational structure of the civil service. The central organ of government administration, appointed by and subordinate to the Prime Minister, was the Head of the Civil Service (Article 23). A Civil Service Council was also established as an active consultative and advisory body of the Prime Minister and the Head of the Civil Service. Three civil service commissions were established. The first was the Civil Service Qualification Commission, which was tasked with conducting qualification proceedings for civil servant categories. The second was the Civil Service Appeals

Commission, which dealt with appeals by civil servants on matters specified in the law, such as official transfers. The third – the Higher Disciplinary Commission of the Civil Service to hear appeals against decisions of disciplinary committees (Article 13).

The Constitution of the Republic of Poland (Art. 153) raised the standards for the performance of public administration tasks by the civil service – professionalism, reliability, impartiality and political neutrality – to the rank of general norms, above the statutory ones. The 1996 Act effectively concretised these principles, but it was in force for a very short time. The new Civil Service Act of 18 December 1998[32] already abandoned in general the principle of appointment of all members of the civil service corps, but included in the civil service corps all government officials whose status was defined on the date of its entry into force by the Civil Service Act (Article 136). Employment relationships in these offices prior to the date of entry into force of the Act, established on the basis of appointment under the terms of the Act on civil servants, were in this situation to remain in force until no later than 31 December 2003, unless they were converted, terminated or expired earlier[33]. Article 2 of the 1998 Civil Service Act stated that the civil service corps – it should be noted the use of this general term for the first time – consists of employees employed in official positions in the Prime Minister's Chancellery, offices of ministers and chairpersons of committees forming part of the Council of Ministers and offices of central government administration bodies, voivodeship offices and other offices constituting auxiliary apparatus of territorial government administration bodies, subordinate to ministers or central government administration bodies, as well as in commands, inspectorates and other organisational units constituting auxiliary apparatus of the heads of voivodeship pooled services, inspections and guards and heads of poviat services, inspections and guards, unless separate acts provide otherwise. Also covered by this regulation were provincial, district and border veterinarians and their deputies. The Act on Employees of Public Administration had and still has a broader scope of subject matter than the Civil Service Act, as it also defines the duties and rights of persons employed in the Prime Minister's Chancellery, offices of ministers and chairpersons of committees forming part of the Council of Ministers and offices of central government administration bodies, provincial offices and other offices

constituting the auxiliary apparatus of local bodies. It is also binding in government administration for entities subordinate to ministers or central government administration bodies, the Government Legislation Centre, commands, inspectorates and other organisational units constituting the auxiliary apparatus of the heads of voivodship combined services, inspections and guards and heads of poviat services, inspections and guards, to whom the provisions of the Civil Service Act do not apply. At the same time, it should be emphasised that only this Act applies to those employed at the Chancellery of the Sejm, the Chancellery of the Senate and the Chancellery of the President of the Republic of Poland. In addition to the category of civil servants, both Acts distinguished employees employed under a contract of employment.

Under the 1998 Civil Service Act, the civil service corps is composed of civil servants employed under a contract of employment and civil servants employed by appointment[34]. The Act on Employees of Public Administration, on the other hand, refers to public officials and employees of public offices who are not public officials. It refers, for example, to an employee and adviser employed in the political office of the Prime Minister, the Deputy Prime Minister, a minister and another member of the Council of Ministers. Nine ranks of civil servants have been established. The way in which the criteria for employment were defined is characteristic: A person could be employed in the civil service if he or she is a Polish citizen, enjoys full public rights, has not been convicted of an intentional crime, and has the qualifications required for the civil service. The concept of qualifications required in the civil service replaced the more strictly defined, though still evaluative, criteria known to the 1922 Act. The employment relationship is established on the basis of an employment contract for an indefinite period or for a fixed term, not exceeding three years. In the case of persons employed for the first time in the civil service, the employment contract is concluded for a fixed term. During the term of this contract, such persons are required to undergo preparatory service, subject to exceptions for graduates of the National School of Public Administration (KSAP). Appointments in the civil service could be sought by a person who has completed preparatory service or is a graduate of KSAP, has at least two years' seniority in the civil service, has a ministerial title or equivalent, speaks at least one foreign language, is a soldier in the reserves or is not subject to general defence duty. Symptomatic of the change

in criteria is the recognition that a ministerial title or equivalent replaces two years' seniority in the civil service, even though it comes from a political appointment. This was already, like knowledge of only one foreign language, a fundamental relaxation of the criteria for admission to the civil service.

The erosion – gradual but progressive – of the civil service in Poland that has occurred in recent years has taken place in two stages. In the first stage, by the Act of 10 March 2006 amending the Act on local government employees, the Act on the Supreme Chamber of Control and the Civil Service Act, the period of preparatory service was shortened from six to two months[35]. In the second stage, persons defined according to the new wording of Article 2(3) of the Civil Service Act were exempted from preparatory service if they were employed for an indefinite period in the organisational unit from which they were transferred and if they had worked there for at least three years. This was, as Ewa Sokalska points out, already a major relativisation of the criteria. The Act of 10 March 2006 on the civil service[36] introduced also the possibility that civil servant positions could be occupied by persons seconded or transferred under separate regulations to perform tasks outside an organisational unit. This was already a fundamental erosion of the foundations of the concept itself. The Act of 24 August 2006 on the civil service (Journal of Laws No. 170, item 1218, as amended) was closely related to the Act of 24 August 2006 on the State Human Resources and High State Positions (Journal of Laws No. 170, item 1217, as amended). On the basis of this Act, civil service membership was relativised for the first time. Civil servants became only one element of the 'state personnel resource'. In addition, persons who had successfully passed an examination to the state human resources pool, persons who had won a competition for a position announced by the Prime Minister and persons appointed by the President as Poland's plenipotentiary representatives in other countries and international representatives were included in this pool. Unexpectedly, persons holding a doctoral degree without specifying an academic discipline were also included in the state human resources by law. Although directors-general of offices were retained during this period, a public service council was also created, which was already something different from the Civil Service Council. At the same time, the competing notion of public service was henceforth to include the notion of civil service institution itself. The 2006 solutions were legitimately criticised by the

doctrine of administrative law[37].

The 2008 Act, returning to the foundations of the idea of the civil service, specified, concretising Article 153 of the Constitution of the Republic of Poland, that the sphere of activity of the civil service corps is the offices of government administration, and that the Prime Minister is the head of this corps. The Act indicated in Article 2 that the civil service corps consists of a group of employees employed in government administration in official positions. A catalogue of institutions in which employees may be included in the civil service was indicated in a closed manner. The use of the vague notion of "official position" has been criticised in the literature. This notion was not defined until a decree of the Prime Minister. Among the positions that were distinguished were mid-level clerical positions as well as independent and coordinating positions. Provision was also made for the affiliation of specialist and support staff. Under the 2008 Act, support for the Head of the Civil Service was provided by the Prime Minister's office. According to the Act, the civil service comprised[38] then includes the offices of ministers and central government administration bodies, as well as the chairpersons of committees that make up the Council of Ministers. The law set out the requirements for the appointment of a person as Head of the Civil Service: among the nine prerequisites, among others citizenship and the enjoyment of full public rights and higher education, there was "good repute" and at least five years' experience in a managerial position in government administration or seven years' managerial experience in the public finance sector. It should also be noted that an obligation of political neutrality was imposed, expressed in the absence of political party affiliation within five years prior to the date of appointment to the post. Such a grace period is to be welcomed; however, it was abolished in later regulations. In the 2008 law, there are requirements not only of good repute for a candidate for Head of the Civil Service, but also in the case of members of the Civil Service Council; "knowledge, experience and authority" providing a guarantee of the proper execution of tasks. These requirements indicate the desire of the then legislator to implement the principle of good administration in the content of the law.

However, the fundamental second stage of the dismantling of the civil service did not occur until after the change of power in 2015. The law amending another law on the civil service, the Act of 21 November 2008[39], which was enacted in

2015[40], reduced the requirements for candidates for senior positions in the civil service. This is because the condition of adequately long seniority in managerial positions (at least 6 years, including 3 years in a managerial position in units of the public finance sector, in the case of candidates applying for the post of director general of an office, and 3 years, including at least 1 year in a managerial position, or 2 years in an independent position in units of the public finance sector, in the case of applying for positions referred to in Article 52(2) to (4) of the 2008 Civil Service Act) was dropped. The latest amendment to the Civil Service Act was enacted on 21 April 2023. It introduces a ban on the employment in the civil service and in state offices of persons who, between 1944 and 1990, served and worked in the state security organs or were collaborators of these organs within the meaning of the provisions of the so-called lustration law. The Act regulates the rules for the termination of employment relationships with respect to persons who have admitted to such collaboration, putting them on a par with so-called vetting liars. This is a fundamental departure from the standards of the lustration law, according to which only so-called lustration lies were to be punished. At the same time, all persons born before 1 August 1972 will have to submit vetting declarations, under threat of losing their jobs, within 30 days of the law coming into force. The Act also changed the mode of training at the KSAP, including the introduction of a dual system of training, i.e. alternating work and training. A new system of recruitment for posts including foreigners was also introduced.

The requirement to possess essential managerial competence, which is of particular importance in the case of senior positions in the civil service, was thus abandoned, as Agnieszka Łukaszczuk points out. The fundamental requirement of not having a criminal record was also significantly modified, related to the prohibition of holding managerial positions in offices of public authorities or performing functions related to the disposal of public funds. In its new wording, the Act, while requiring a conviction only by a final court judgment, does not exclude from the circle of candidates for senior positions those who have been convicted of such an offence, but not with a final judgment. The condition relating to the prohibition of a candidate's membership of a political party has also been substantially changed. Instead of requiring a five-year grace period for political party affiliation which allowed for the severance or at least substantial

weakening of political ties, the current rules only require that the candidate not be a member of a political party at the time of appointment[41]. As Agnieszka Łukaszczuk states, the adopted mode of filling senior positions in the civil service means a break with the principle of open and competitive recruitment through competition for senior positions. It also raises fundamental objections from the point of view of the principle of neutrality and the principle of professionalism of the civil service, as understood by the doctrine of law and the case-law of the Constitutional Tribunal[42]. This also undermines the stability of positions specific to the civil service. In the Court's view, civil service employment is not intended to be a mere temporary occupation, but a permanent source of livelihood and a workplace that provides competent persons with the opportunity to pursue a career. The constitutional requirement of professionalism is also to ensure that those employed in the civil service are promoted[43]. In the Tribunal's view, the creation of equal opportunities for members of the civil service to be promoted at career level prejudices the desire for continuous improvement of qualifications. In the justification of the draft, which was formally a parliamentary draft, even though it concerned the basic functioning of the Council of Ministers. Is this to bypass, as one might think, the process of public and departmental consultations that could critically assess the draft itself? It is difficult to accept that a legal act concerning the functioning of government administration could, at the will of the parliamentary majority, be drafted without the prior knowledge and consent of the Prime Minister and the Council of Ministers. for a long time, an image of an inefficient civil service was created in connection with the impossibility of swiftly dismissing senior civil servants at the will of political appointees; thus, what is a fundamental advantage of the civil service, career stability conducive to independence, was presented as its great disadvantage, blocking dexterity in the implementation of the ruling party's political project. Meanwhile, the only demonstrable dysfunction of the earlier regulation, which was indeed prevalent, was the protractedness of competitions for top civil servant positions, but at least careful consideration of applications followed.

The hybrid legal state of the current civil service means that its principles have been retained for lower civil servants, but the entire corps of senior civil servants has been, as it were, excluded from the civil service. The anchoring of the civil service in the Constitution makes it impossible to abolish it altogether without

amending the Basic Law, hence the likely partial solution. The legal regime of appointment and dismissal, known already in the People's Republic of Poland and in the system of so-called “democratic centralism”, was introduced with regard to civil servants, without preserving their necessary independence. It has been pointed out in the literature that this partly “amputated” civil service can no longer fulfil its role, since, for example, the Director-General, who was supposed to guard the course of recruitment with the appropriate equality of independence, a fair competitive selection, becomes – and this was not even concealed by the drafters – to a large extent a body implementing political will. This was an abandonment of the basic concept of the civil service: to remain a link between politicians creating plans for change and civil servants aware of the real possibilities of the state. In such a situation, the negative and sometimes even chilling effect on lower civil servants becomes obvious. The doctrine of administrative law is for the most part critical of these changes; it does so both based on existing case law and on the basis of a thorough analysis of the legal state and literature[44].

Jacek Kozłowski and Jan Sobiech analyse problems in the functioning of the civil service in the light of recent regulations: these include a significant reduction in the autonomy of the civil service, an imbalance between the principle of political neutrality and the principle of loyalty, and the treatment of the civil service as the property of politicians falling to the ruling party. The civil service is currently understood as an instrument for the control of personnel policy, the regulations are characterised by fragmentation, in public administration the authority over the civil service has become blurred and unclear, and the dominant model is that of an official focused on the procedural functioning of the office rather than on achieving objectives, which is inappropriate especially in conditions of administration under conditions of uncertainty and crisis management often characterising contemporary administration. At the same time, there has thus been a return to the archaic 19th century version of the spoils system – so it is no longer a career model or a Scandinavian model of positions. Undoubtedly, however, the ruling coalition has thus been able to appoint its appointees directly, with lower barriers to promotion than before. What arouses the greatest criticism is the destruction of the social sense of stability, certainty, impartiality and apolitical service to the state that was so important for the young generation

of the civil service, and which was built with such difficulty only after 2008. It needs to be stressed that, as experience shows, Poland has long since built up a national civil service that meets the basic standards of Western civilisation. A return to that is therefore possible, to a large extent, with reference to our own tradition, but also with the implementation of new contemporary elements with which the civil service has been enriched in the era of digital administration[45].

1. Journal of Laws 1922. No. 21, item 164. See A. Łukaszczuk, *Kształtowanie się modelu administracyjnego służby cywilnej w Polsce*, Warsaw, 2014; E. Sokalska, *Służba cywilna – geneza, uregulowania prawne, prognozy*, Acta Universatis Wratislaviensis, no. 78/2008, Wrocław, 2008, p. 114 et seq.
2. The origins of the civil service in Poland are analysed by G. Dostatni, *Koncepcje służby cywilnej a realizacja konstytucyjnego celu jej działania*, Warszawa, 2011, p. 9. et seq. See J. Malec, D. Malec, *History of administration and administrative thought*, Krakow, 2000, p. 5 et seq. p. 199 et seq.
3. B. Kołaczkowski, M. Ratajczak, *Samorząd terytorialny w zaborze rosyjskim? Początki decentralizacji administracji terenowej w Królestwie Polskim i na Ziemiach Zabranych w latach 1861-1915*, in *Samorząd Terytorialny*, 7/8, 2013, no. 7/ 8, pp. 154-155.
4. H. Izdebski, *Polska administracja publiczna na tle administracji innych krajów. Rozwój historyczny*, Biuletyn Służby Cywilnej, 1997, part 1, no. 4, p. 35 et seq.
5. S. Grodziski, *W królestwie Galicji i Lodomerii*, Kraków 1976, p. 285 et seq. In more detail: W. Witkowski, *Historia administracji w Polsce 1764-1989*, Warszawa, 2007, pp. 341 et seq.
6. Art.1-3 of the 1922 Act. See A. Torus, *Kto wymyślił służbę cywilną?*, Biuletyn Służby Cywilnej, 1998, no. 3(9), p. 39.
7. S. Grodziski, op. cit., p. 222.
8. J. Korczak, *Stulecie polskiego prawa urzędniczego*, Acta Universitatis Wratislaviensis, 2019, no. 3888, Prawo CCCXXVII, pp. 83-111.
9. W. Witkowski, op. cit., p. 222-223.
10. Article 6 of the 1922 Act; K. Gadowska, *Dysfunkcje administracji. Służba cywilna w perspektywie neoinstuncjonalnej*, Kraków 2015, pp. 297, 312.
11. In full: A. Chojnowski, *Koncepcje polityki narodowościowej rządów polskich w latach 1921-1939*, Wrocław, 1979, passim.
12. L. Zieleniewski, *Prawo urzędnicze*, Kraków 1937, p. 10.
13. Article 21 of the 1922 Act. More extensively on this issue J. Korczak in: *Sytuacja prawna pracowników samorządowych w II i III RP* in: *20 lat samorządu terytorialnego w II i III Rzeczypospolitej*, ed J. Korczak, Wrocław, 2010, p. 379 et seq.
14. Article 21 of the 1922 Act.
15. Article 12 of the 1922 Act., K. Gadowska, op. cit., pp. 80-84.
16. Article 25(4) of the 1922 Act.

17. Z. Cybichowski, *Polskie prawo państwowe. Na tle uwagi z dziedziny nauki o państwie i porównawczego prawa państwowego*. Volume three, Warsaw, 1933, pp. 217-220.
18. A. Bregman, *O polskim państwo podziemnym i Armii Krajowej*, Demokrata 184/307, Warszawa, 1944; See S. Korboński, *Polskie państwo podziemne*, Wrocław, 1989, p. 49-60.
19. W. Bartoszewski, *O Żegocie. Relacja poufna sprzed pół wieku*, Warszawa, 2013, p.11 and seq.
20. A. Kamiński, *O służbie i zasłudze*, Warszawa, 1943, Biuletyn informacyjny, quoted by B. Wachowicz, *Kamyk na szańcu, Opowieść o druhu Aleksandrze Kamińskim*, Warszawa, 2021, p. 222.
21. K. Lanckorońska, *Wspomnienia wojenne*, Warszawa, 2022, passim.
22. H. Czech-Jezierska, *Uwagi na temat kształcenia pracowników samorządowych w okresie II Rzeczypospolitej*: https://bsawp.edu.pl/wp-content/uploads/2020/04/art_Czech-Jezierska_2018_1.pdf; More extensively S. Karboński, *Polskie państwo podziemne. Przewodnik po podziemiu*, Warszawa, 1989, passim.
23. C. Ura, *Samorząd terytorialny w Polsce Ludowej 1944-1950*, Warszawa, 1972; see History of the People's Republic of Poland.
24. E. Ura, *Prawo urzędnicze*, Warszawa 2003, pp. 9 et seq.
25. Representative of this approach: M. Jaroszyński, *Z teorii i praktyki prawa administracyjnego w PRL*, Warszawa 1964, p. 64 et seq; see C. Ura, op. cit.; see W. Jaśkiewicz, *Rozwój sytuacji prawnej pracowników administracji państwowej w PRL*., in J. Łętowski, *Pracownicy administracji w PRL*, Wrocław-Warszawa-Kraków-Gdańsk, 1984, pp. 43-50.
26. E. Sokalska, *Służba cywilna – geneza, uregulowania prawne, prognozy*, Przegląd Prawa i Administracji, 2008, no. 9, pp. 117-118.
27. Articles 60, 153 of the Polish Constitution. See Elżbieta Ura, *Konstytucyjne prawo dostępu do służby publicznej - z uwzględnieniem orzecznictwa Trybunału Konstytucyjnego*, in *Państwo i prawo wobec współczesnych wyzwań. Zagadnienie prawa konstytucyjnego*. Jubilee Book of Professor Jerzy Jaskiernia, eds R. M. Czerny, K. Spryszak, Toruń, 2012.
28. Journal of Laws 1996, No. 89, item 402. See Z. Cieślak, J. Jasielski, K. Rączka, *Komentarz do ustawy o służbie cywilnej*, Warszawa, 1998, p. 91 et seq.
29. Ibid, see H. Izdebski, op. cit.; E. Sokalska, op.cit., pp. 118 et seq.
30. T. Grosse, *Czy w Polsce powinna powstać samorządowa służba cywilna?* Samorząd Terytorialny, 2000, no. 7/8; J. Itrich-Drabarek, *Samorządowe służby cywilne służba cywilne – fakty iI mity*, Służba Cywilna 2004-2005, No. 9.
31. More extensively: M. Stec, S. Płażek (eds.), *Służba publiczna. Stan obecny, wyzwania i oczekiwania*, Warszawa, 2013.
32. Journal of Laws 1999, No. 49, item 483. See E. Sokalska, op. cit.
33. Article 137 of the 1998 Act.
34. W. Mikułowski, *Sprawna służba publiczna jako instrument rządzenia państwem (I)*, Współczesne Zarządzanie, 2003, no. 2, pp. 79-80.

35. Journal of Laws of 2006. No. 79, item 549, art. 3 item 2, amendment of art. 25 para. 4 of the Act of 1998.
36. Journal of Laws 2006. No. 170, item 1218; see E. Sokalska, op. cit. p. 114 et seq., A. Sarota, *Służba cywilna w Polsce po 1989 roku*, Przegląd Legislacyjny, 2007, no. 3, pp. 65-66.
37. W. Drobny, M. Mazuryk, P. Zuzankiewicz, *Ustawa o służbie cywilnej. Komentarz*, 2nd ed., Warszawa, 2012, pp. 33-34, p. 46 and the literature cited therein.
38. Article 2(1)(2) of the Civil Service Act. Por. See W. Drobny [in:] W. Drobny, M. Mazuryk, P. Zuzankiewicz, *Ustawa* ...., pp. 57 and 58.
39. Journal of Laws 2008. No. 227, item 1505.
40. Ustawa z dnia 30 grudnia 2015 r. o zmianie ustawy o służbie cywilnej oraz niektórych innych ustaw, Journal of Laws 2016, item 34.
41. See Article 11(1)(7) to (9) and (2) of the 2008 Act, as it stood prior to the entry into force of the 2015 Amendment Act. See A. Łukaszczuk, *Kształtowanie się model ustrojowego służby cywilnej w Polsce*, Warszawa, 2014.
42. Professionalism as a problem of the civil service – see A. Dębicka, M. Dmochowski, B. Kudrycka (ed.), *Profesjonalizm w administracji publicznej*, Białystok 2004, introduction and materials therein.
43. Ibid, pp. 11 et seq.
44. J. Korczak, *Koncepcja służby publicznej w polskim prawie urzędniczym*, in *Kryzys, stagnacja, renesans? Prawo administracyjne przyszłości*. Professor Jacek Jagielski's jubilee book, ed. M. Wierzbowski, J. Piecha, P. Gołaszewski, M. Cherka, Warszawa, 2021, p. 585 et seq. and the literature cited therein. See A. Morawski, M. Szczegielniak, *Wpływ służby cywilnej na funkcjonowanie państwa w sytuacjach kryzysowych*, Studia Iuridica XCII, pp. 242-255.
45. J. Kozłowski, R. Sobiech, Służba cywilna dziś i jutro. *Kluczowe problemy i propozycje rozwiązań*, https://www.batory.org.pl/wp-content/uploads/2020/09/Sluzba-cywilna-dzis-i-jutro.pdf .