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PROBLEMS WITH RIGHT TO GOOD ADMINISTRATION IN THE CONTEXT OF NEW SOLUTIONS – MULTI LEVEL GOVERNANCE

ABSTRACT
Administration is a very important mechanism for implementing tasks of the state, which consists of various types of bodies and institutions. As a collection of mechanisms it is responsible for the practical implementation of the functions of the state. This means that the way the administration is organized, especially its functioning, affects the quality of the performed tasks and translates into the image of the state in the eyes of the citizens. Dysfunctional administrative apparatus of the state is unable to solve problems and social needs, satisfy the aspirations and can even inhibit the development of civilization and culture of entire societies. In modern democracies, the administration carries out not only those tasks that are part of the classic catalog of its functions, but also fulfills the additional responsibilities of membership in supra and international structures that shape the contemporary social order. Such various range of tasks clearly shows that the meaning of the administration existence is undertaking relevant organizational, managerial and planning actions. Administrative apparatus is to be helpful in solving social problems and to serve the public – Lat. administrare. In the context of the changes

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and transformations of contemporary states and societies that are taking place under the influence of various factors (globalization, regionalization, integration processes, economic crises, armed conflicts), the right to good administration begins to be an issue of a particular importance. Nowadays, it is not only a fundamental right of every citizen and the principle of European administrative law, but, above all, it becomes a condition for efficient satisfaction of still growing needs and aspirations of individuals, social groups and whole societies.

*Keywords:* public administration, good administration, the right to good administration, governance, multi-level governance

The administration is very important, institutional component of the public authority. It is responsible for the practical implementation of the planning, management and organizational functions of the state. Hence, the way it is organized and its actions influence not only the quality carried out tasks, but also it creates the image of country in the eyes of the its citizens. Administration conceived as an executive mechanism for carrying out tasks of the state, consisting of various types of bodies and institutions, may be a factor in acceleration of civilization and cultural progress or a factor of their inhibition. Nonfunctional state administrative apparatus, unable to solve basic problems and satisfy social needs, translates into a reduction of authority legitimacy, and even can lead to its alternation (Lipska-Sondecka 2015, p. 271). In modern countries administration fulfils an extensive and diverse range of public tasks. Their common aim is to meet the growing needs and aspirations of society. Therefore, all actions of state’s executive apparatus (administration), consisting of the practical implementation of the tasks which are formulated in political programs of groups which exercise authority, should have a comprehensive, synergistic approach to their solution.

The turn of the 20th and 21st century brought new challenges and tasks which modern states and their administrations must face. Deepening processes of Europeanization and globalization made the administration the most important executive mechanism in the scope of problems solutions of collective life. The functioning of the countries within international and
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supra-structures influenced the adoption of the additional tasks arising from membership in European and global economies.

Under the new conditions administration had become a mechanism which was capable of taking organizational, managerial and executive actions, not only at national level but also at transnational one. The burden of public affairs proper management rested on administration. This brought the necessity of construction of the administrative machinery in such a way that could practically fulfil the assigned functions (Lipska-Sondecka 2015, p. 276) as a complex system of bodies and institutions. Deepening, in all spheres of public life, process of globalization revealed dysfunctions and irrationality of the traditional administration model. The concept of ideal bureaucracy, proposed in the early twentieth century by Max Weber, assumed that it is an integral component of rational authority and has the following features (Hausner 2008, p. 13–14):

- Continuity of exercise of official functions which are subjected to specific rules;
- Clear division of powers between the administering authorities;
- The hierarchical structure of the organization offices;
- Office activities focused on procedures;
- Norms and rules of the law defining the action boundaries for offices and their personnel;
- Professionally prepared staff.

Weber believed that the bureaucratic model of administration, due to the assumed precision of officials’ actions, stability of employment, discipline and loyalty, is able to provide the highest level of performed tasks. Bureaucratic administration is, according to Weber, the most rational model, from formal and technical point of view (Hausner 2008, p. 15). The concept of ideal bureaucracy, however, did not stand the test of time. The twentieth century, and especially its second half, characterized by changes that led to the formation of a new social order. Modern information and communication technologies presented a relevant importance for the organization and functioning of the state, economy and society. The construction of knowledge-based economies, changes in the social structure, which were a result of a higher level of education, and increase of the awareness concerning the rights of the individual as well as the growing role of mass media in creating public opinion caused the traditional, bureaucratic model of administration turned to be ineffective in solving
social problems and meeting the aspirations of individuals, groups and societies. Irrationality of Weber’s concept of ideal administration was aptly described by Krzysztof Szczerski who wrote: “Max Weber hung the construction of the state on a frame made of clerical structure – hierarchical, professional, acting schematically, separate, internally consistent and, to a large extent, closed, based on the logic of abstract legal norms created a priori” (Szczerski 2004, p. 340–341). It is not surprising, therefore, that, with the progressive process of internationalization and globalization in all spheres of public life since the eighties of the last century, the classical form of the state, along with the model of ideal bureaucracy, proved to be incapable, not only of meeting basic social needs, but also of generating civilization and cultural progress. Long-term processes of decentralization, deconcentration, creation of new entities responsible for the implementation of some of the tasks of a public nature, in particular the development of the local government, resulted in a significant transformation in the process of country’s organization and functioning. In addition, the factors accelerating changes in the public sphere were rapid development of modern technology, computerization, technical progress, and many other phenomena which significantly changed the quality of life of individuals, groups and societies. In the West of Europe and in the world there was beginning of research, economic, political and cultural, centers creation, which gave birth to new social structures and their infra-systems (Lutrzykowski & Gawłowski 2010, p. 12). On the basis of these changes, there was criticism of the traditional model of state management, and, along with it, the proposals for new solutions in the area of organization and functioning of the public sector appeared. The concept of New Public Management, which appeared in the eighties of the last century, especially in the Anglo-Saxon countries, was based on the patterns and experience of the private sector management. New Public Management model took into account the existence of independent and equivalent entities performing defined tasks, the use of market mechanisms, promotion of competition within the scope of services, social control of performed tasks, decentralization of competences and introduction of public participation in the process of planning and execution of public tasks (Czaputowicz 2008, p. 147). The new management methods, which evolved on the basis of
Weber’s model of governance criticism, destroyed the vision of the ideal, even utopian legal and organizational solutions which were there to ensure the reliability of modus operandi based on the established procedures.

Clearly demonstrated that the administrative apparatus of the state must be a collection of well-designed and organized devices through which it will be possible to satisfy the growing, complex and diverse needs in an efficient and effective way. The perception of the administration as the most important mechanism for execution of public tasks proved to be crucial during next decades. The nineties of the twentieth century are characterized by improvement of methods and tools management, which was already applied in the public sector, and the search for new ones. There is an appointment of the concept of Good Governance which is based on efficient and democratic governance system, effectively functioning public institutions, high quality services and the ability to respond quickly to new needs and expectations of society (Czaputowicz 2008, p. 150). According to Good Governance model administrative apparatus is characterized by transparency of action directed to satisfy the needs, personal honesty of clerks, the use of high ethical standards, respect for the law, the responsibility for assigned tasks, social solidarity. A key role in the concept of Good Governance is played by civil society which is essential for the quality of governance and elimination of any deficiencies in solving problems of collective life and achieving the objectives which are indicated by the centers of political disposition.

The turn of the 20th and 21st century brought the increase of polycentrism and complexity of the social order, ongoing functional differentiation of the various segments of the public authority and the final erosion of the principle of hierarchical subordination (Mazur 2010, p. 64). The authority, which, even in the early twentieth century, was focused on the centers of political disposition, was distributed into independent structures of the global market, supranational and international organizations, local governments, governmental agencies and self-organizing society (v.: Czaputowicz 2008, p. 135). A new form of governance and a new type of state (network type) were established. As it was aptly stated by Hubert Izdebski “the network state is considered a modern civil state type, opposed to the traditional, statistical and centralized administrative state”; and the
primary mission of the new type of state is considered to be “management of networks, i.e. creating conditions and facilitating interactive processes in public and non-public networks in a way that enables solving problems of underrepresented group of stakeholders or lack of representation and articulation of interests but also considering them in a clear, transparent and sustainable procedure” (Izdebski 2012, p. 352). Network state bases its organization on a complex and diverse structure of public and social subjects functioning in the vertical and horizontal planes of actions carried out by all participants of the political system. The specific kind of network of mutual relations is created between them. These are the relations of different nature: legal, financial, institutional, commercial, economic. Each of these entities is relatively autonomous and performs determined part of the tasks and responsibilities which were traditionally assigned to state power. A new model of governance (*multi-level governance*) is defined. Its essence is the multi-level partnership of all public and private entities that carry out various social tasks. The ability to govern in the new public space is reduced, therefore, to coordination and bilateral harmonization of actions of all subjects of social relations. Understanding of the nature of this ability is a condition of the practical ability to cooperate, collaborate and co-participate in the political system, and it makes sense only when it occurs simultaneously in the vertical and horizontal planes of their actions (Lipska-Sondecka 2015, p. 191–192).

The complexity of modern social systems represent, as well, alterations in business administration. Collection of various types of devices performing public (administration) tasks must concentrate its organization on functional solutions which allow to undertake non-standard measures that require cooperation with other partners. The role of administration in the concept of *multi-level governance* is, therefore, determined to meet the civilization and culture aspirations of individuals, groups and societies through the fast transfer of knowledge, information and technology to all levels of management. This means that in the modern area of social relations there is an increasing demand for good and effective governance which includes good administration (Mazur 2010, p. 64) as its constitutive element. The right to good administration is the most important, elementary right of every citizen, especially in the twenty-first century.
The idea of the right to good administration was stated under the concept of protection of individual rights against “arbitrary and despotic rule of public administration” (Oniszczuk 2008, p.61). According to the idea, the functioning process of authorities and institutions forming the executive mechanism for public tasks should be focused on maintaining and improving these freedoms and human rights which determine the level of all people. Good administration is also efficient functioning of the state and other entities of social life involved in the process of co-management. The concept of good administration is various and difficult to define in an unequivocal, brief way. The concept of the right to good administration system consists of detailed legal rules regulating behavior of public life subjects (administrative law), the elements related to the organization and management and the scope of the relationship between administration authorities and citizens.

The individual’s right to good administration was noticed by international and supranational moderators of public life, and the first subject of international relations, which became interested in this issue, was the Council of Europe. It was the time of seventies of the last century when the Council of Europe took actions which aimed to define some general standards and patterns of behavior in relationship between the individual and the administration. In the resolutions and recommendations of the Council of Europe, concerning the standardization of the right to good administration, it is emphasized that decisions of administration authorities were compliant with the principles of respect for human rights and civil liberties. This means that the administrative procedures should be a guarantee, for an individual, providing the equitable execution of specific arrangements of substantive law, so that it shall be equipped with subjective rights in administrative proceedings (Jackiewicz 2008, p. 35 and 101). The right to good administration is an important part of the catalog of human rights includes the protection guarantee concerning the citizens’ rights and freedoms. Standards, developed by the Council of Europe, pertaining respect for and protection of fundamental, natural rights of

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1 It concerns the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950.
individuals (dignity, freedom, equality, solidarity, citizens’ rights) were recognized and accepted by another entity in international relations – the European Union. In a joint declaration of the European Parliament, the European Commission and the Council of 5 April 1977 it was stated that the Community institutions are obliged to respect fundamental rights, and the confirmation of compliance concerning the rights was included in the introduction of the Single European Act of 17 February 1986 (v.: Jackiewicz 2008, p.37. The Treaty of Maastricht (1992) confirmed that the Member States of the European Union shall respect the principles that make up the catalog of human rights and fundamental freedoms, which include the right to good administration. On the European Council initiative, at its meeting in Cologne in 1999, the European Union began work on their own project act in terms of the rights and freedoms concerning the citizens of the European Communities Member States. The draft document was supposed to be a coherent system of standards which will be the foundation of the future, EU regulations of the Member States. The convention 60 persons consisting of representatives from the Heads of State and Government of the European Union, national parliamentarians, MEPs and members of the European Commission was appointed. The team’s task was to prepare the final draft of the Charter of Fundamental Rights of the European Union. The Charter was adopted and signed by the Heads of Governments of the Member States at the summit in Nice on 7 December 2000. After signing the document it turned out that determining its legal nature and force was an extremely important issue. There was no agreement, on the European Union forum, pertaining the way the Member States would treat the provisions of the Charter, i.e.: if the card should be treated as another act of primary law of the Union, or as a political statement? The settlement of the dispute was dealt with by the European Convention, which suggested to place the text of the Charter as an integral part of the Constitutional Treaty. In this way the rank and the validity of the document would be confirmed for the entire EU society. However, the failure of the European Constitution ratification process meant that the Charter of Fundamental Rights was not brought into force. Only in the course of work on the reform of the Union, in the framework of the so-called The Lisbon Treaty, the Charter acquired the status of an in-force.
legal act which was an integral part of it. The Charter of Fundamental Rights was signed by all EU Member States, with the exception of the UK and Poland. The countries mentioned did but with certain reservations (i.e. The British protocol). This means, for citizens of these countries, they will not be able to fully benefit from the protection of the rights guaranteed by the Charter (v.: Protocol on the application..., 2007, C306/156).

The Charter of Fundamental Rights of the European Union consists of a preamble, 7 chapters and 54 articles, combining fundamental personal, political, economic, social rights as well as the right to good administration. Its content was included in Art. 41 of the Charter, which states that every citizen of the European Union has the right to ensure that his/her case was handled by the EU institutions and authorities neutrally, reliably and within a reasonable period of time. Administrative bodies actions, in accordance with the provisions of the Charter, must be compliant with the law, neutral, objective, apolitical, and the entity has the right to require specific behavior of the officials. The provisions of the Charter clearly show the citizen’s subjectivity in relation to the administration apparatus and it constitutes the essence of the right to good administration (Ura 2007, p. 231).

Another document of the European Union which confirms and develops the principle of the right to good administration is European Code of Good Administrative Behaviour adopted by the European Parliament in the form of a resolution on 6 September, 2001. The Code is included in the group of the European Union legislation acts defined as so-called. soft law. It does not bind the addressee but may be relevant to the interpretation of national law. The European Code of Good Administrative Behaviour specifies basic obligations of EU and Member States officials with regard to their use of certain trial rules in a way based on the principle of proportionality, fairness as well as being guided by common sense and fairness to settle things difficult and socially sensitive (Izdebski 2012, p. 384). Despite the “soft” legal nature of the Code all officials may treat it as a guidepost explaining the importance of the standard which is the right to good administration.

Polish membership in the Council of Europe and the European Union obliges our country to use European and international standards in the
system of national law for the organization and functioning of public entities. Polish public authorities fulfill an obligation to act on the basis and limitations of the law. It is a result of the democratic nature of the rule of law, which is the Republic of Poland (The Constitution…, 1997, Art. 2, 7, 9). In addition, the issue of the right to good administration is contained in Art. 153 of the Polish Constitution, which states that in order to ensure a professional, diligent, fair-minded and politically neutral performance of the country, the civil corps, in the offices of government, is established. At the level of ordinary acts the right to good administration translates to the general rules of administrative proceedings, such as: the rule of law, legality, efficiency, objectivity, transparency, openness, professionalism, loyalty. Guarantee of these rights belongs to administrative courts (Lipska-Sondecka 2011, p. 96). However, the right to good administration, decreed in the form of various types of laws or codes, is not a self-reinforcing mechanism. An important role in developing the practical dimension of entities of standards of social relations is played by citizens’ awareness of the right to a good, reliable, fair and friendly administration. Responsibility for the transfer of knowledge in this area lies with the scientific, academic and social communities. This task is particularly important in an era of constant changes generated by endo and exogenous factors. The concept of multi-level governance is forcing all public entities, involved in the governance process, to make sensible, objective and rational actions that result in the rapid transfer of technology, goods, services and human notion. The role of the government in the implementation of civilization and culture progress is therefore crucial. In this context, the right to good administration gains a new meaning. It is not only the value resulting from the fundamental rights and the principle of European administrative law, but becomes a condition for the generation of greater prosperity, security, stability of existence, development and respect for the dignity of individuals, groups and societies.