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## The evolution of the Polish civil service since 1989

STUDIA I ANALIZY

**Keywords:** *the civil service, a law, political loot, state, political neutrality, impartiality, reliability, professionalism*

**Abstract:** *The aim of the article is to characterize the changes which have taken place in the Polish civil service since 1989. By using the neo-institutional method, the author discusses the political, social and economic conditions in which the Polish civil service functioned, as well as their influence on its shape and the direction of its activities. The author demonstrates how the civil service in Poland has undergone a succession of alterations under successive political administrations, which instead of developing the civil service as an instrument for the effective management of the state, had instead treated it as political loot. To prove this thesis, the author attempts to analyze particular stages of the formation of the civil service, and the consequences of those changes for the effectiveness and transparency of the state.*

### The evolution of the Polish civil service

The goals and tasks of public administration, functioning within the organizational system of the state and – at the same time – organizing this system, have changed with the social, political and economic situa-

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tion in Poland. The formation of the administration in the period before World War II, in the years 1918–1939, proceeded along different lines compared to other countries which gained independence after World War I. Only Poland was reborn as a state with so many administratively and organizationally differentiated areas, which brought a variety of legal solutions and various experiences. This was the reason why Poland could make a choice regarding which models to draw from and which solutions to use. The experiences of Germany, Austria, Russia or France could have become the inspiration for Polish law makers<sup>1</sup>.

The civil service in Poland was created on 17 February, 1922, when a law was passed which regulated the legal and social status of a civil servant<sup>2</sup>, including the conditions of joining the service; the conditions of establishing and changing the employment relationships; the principles of disciplinary liability as well as the rights and duties of the government administration workers. The Act which formed the national civil service was one of the first legal acts covering all the territory of Poland. It was enacted on 1 April, 1922 and was formally binding for 52 years – until 31 December, 1974, when the provisions of the labour code from 26 June, 1974 was passed<sup>3</sup>. However, in the years following 1945, the previous vision of the civil service was rejected by the authorities, with the image of an official that had been created before World War II being erased, and this was followed by a number of irregularities referring to the employees' attitudes, citizens being improperly served, corruption, etc.

During the last thirty years the performance of tasks by the administration has been made difficult due to the processes of political transformation. Until 1989, the public administration performed tasks connected with ensuring order and enforcing regulations e.g. by managing nationalized enterprises and industrial enterprises. Its tasks also included securing the needs of citizens in the most possible scope<sup>4</sup>. In contrast, after 1989 its goal was to build a democratic state by withdrawing from the central management and planning for the benefit of the idea of subsidiarity, conducting the process of privatization and reprivatization,

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<sup>1</sup> Guided by historical experiences, Poland chose France.

<sup>2</sup> The act from 17 February, 1922 on national civil service, Journal of Laws of the Republic of Poland, No. 21, item 164, with amendments.

<sup>3</sup> Labour code from 26 June, 1974, uniform text. Journal of Laws 2019, item 1040, with amendments.

<sup>4</sup> S. Michałowski, *Państwo obywatelskie a przebudowa administracji publicznej*, [in:] A. Pawłowska (ed.), *Administracja publiczna, Zagadnienia wstępne*, Lublin 1999, p. 174.

implementing a new approach to the management of public matters, applying the ICT (Information and Communication Technologies) tools to increase the quality, openness and transparency of its functioning, and finally, maintaining certain elements of administrative authority. This radical change of goals in the functioning of public administration has given rise to problems in implementing a new approach, especially in the first period of transformation.

The introduction of the system of the civil service to the Polish government administration was aimed at changing the working style of the staff and management, preparing them for the integration with the European Union states, as well as the challenges brought by cultural and economic globalization. The Polish administration also had to cope with the social requirements and expectations, i.e. increased requirements for administration.

The discussion on providing solutions to these challenges concerning the civil service after 1989 had a deeply political context. Many election campaigns began with various promises related to it, for example reforms, the restoration of European standards; abolishing it as a costly creation (the suggested 'overstaffing'), which was at the same time an inefficient system; the limitation of its scope and costs, or its reorganization. Successive governments have presented their projects concerning the image and organization of the civil service, and parliament have passed successive laws, none of which was given the chance to function for a long period of time. Disputes on the introduction and the functioning of a definite model for the civil service in Poland had an emotional character, with deeply rooted prejudices against the governments of bureaucrats, which was in part justified by the experiences of the years 1945–1989<sup>5</sup>.

The establishment of the civil service in the Third Republic of Poland encountered a number of difficulties, including indefinite socio-economic divisions existing in the country, an unstable political situation (the weakness of political parties) and a system of patronage. Help in successive reforms of public administration in Poland paradoxically came from the faults of the system.

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<sup>5</sup> K. Brunetko, *Slużba cywilna w III RP: punkty krytyczne*, Warszawa 2003; J. Itrich-Drabarek, *Uwarunkowania, standardy i kierunki zmian służby cywilnej w Polsce na tle europejskim*, Warszawa 2010; G. Rydlewski, *Slużba cywilna w Polsce*, Warszawa 2001; E. Ura, *Ewolucja służby cywilnej (wybrane zagadnienia)*, «Zeszyty Naukowe Politechniki Rzeszowskiej (Zarządzanie i marketing)» 2007, nr 245, z. 11.

The civil service in Poland after 1989 witnessed four acts<sup>6</sup> and these acts had a number of amendments. The evolution in the law, organizational changes, financing and the designed tasks were strictly dependent on the changes in the Polish political situation. The first act – Act on the civil service from 5 July, 1996 – was modeled on French solutions, another – on Japanese models (Act on the civil service from 18 December, 1998), while the Act from 24 August, 2006 was considered either as a breakthrough or the ‘nail in the coffin’ of the civil service (the difference in attitudes was dictated by the political situation). The Act from 21 November, 2008, in a way normalized the situation, but its amendment in 2015 resulted in another decrease of the importance of the civil service. The legal solutions adopted in the aforementioned acts of law indicate the different ways in which the legislator can understand the essence of the civil service, its role and tasks.

The need to create a civil service in Poland was already acknowledged at the beginning of the transformation. It was as early as 1990 that work began on projects of the ‘state public service’, next called the ‘state civil service’, and finally simply called ‘the civil service’. In September 1990 work was undertaken by the Office of the Council of Ministers on a draft bill on the state civil service, while in the years 1991–1995 three official bills were created. However, a lack of political consensus and frequent changes in political leadership resulted in these plans not coming to fruition. The discussion oscillated between the choice of the career model or the positional one. The view that prevailed was that for Poland, which was going through a turbulent period of social and political transformation, the safer model was the career model. The proponents of this model suggested its advantages were: hierarchical structure, professional stability and the system of seniority, while opponents of the positional model emphasized its faults, for example the necessity of increasing salaries or (with lower salaries) lowering the level of requirements; a lack of institutional memory; and the absence of the formation of the ethos of public service in Poland. Irrespective of the various proposals concerning the organizational solutions, the discussions concerning the Polish civil

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<sup>6</sup> Act from 5 July, 1996 on the civil service; Journal of Laws from 1996, No. 89, item 402; act from 18 December, 1998 on the civil service; Journal of Laws from 1999, No. 49, item 483; act from 24 August, 2006 on the civil service; Journal of Laws from 2006, No. 170, item 1218 (together with simultaneously passed act from 24 August 2006 on the national reserve of human resources and senior national positions; Journal of Laws from 2006, No. 170, item 1217); act from 21 November, 2008 on the civil service; Journal of Laws from 2008, No. 227, item 1505.

service always included the demand for the abolition of the practice of the politicization of public administration and the tradition of dividing the loot.

Including the civil service in the fundamental law from 1997 certainly saved it from the attempts by politicians of different options. Art. 153 of the Constitution of the Republic of Poland stipulates that the civil service is called to operate as the organs of the government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the state's tasks<sup>7</sup>. Furthermore, art. 7 of the Constitution of the Republic of Poland provides that the organs of public authority function on the basis of, and within the limits of, the law. The civil service operates on the basis of administrative law, which means it is established on the basis of the norms regulating the organization and functioning of the government administration as a part of the state apparatus, and physical persons, within the scope which is not regulated by other regulations of the law. In the light of the values which form the foundation of the Constitution of the Republic of Poland, public administration is characterized by four basic features (attributes). These are: competence, efficiency, political neutrality, and servitude<sup>8</sup>.

Still before the Constitution was passed, the act on the civil service from 5 July was adopted as a result of long disputes, and it was based on the organization of the civil service in France<sup>9</sup>. The act was supposed to be a milestone in the development of the civil service in Poland, and it gave rise to a wave of public reactions, including press articles – initially enthusiastic, but then with negative opinions. This criticism resulted from the promotions of the directors of general voivodship offices, and the act was called 'a false start' since the idea that directors-generals should be appointed according to political affiliation was considered to contradict the idea of the civil service.

The act divided the employees of the government administration into two groups. The first group comprised the nominated civil servants, while the other included those employed in the government adminis-

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<sup>7</sup> The Constitution of the Republic of Poland from 2 April, 1997; Journal of Laws from 1997, No. 78, item 483, with amendments.

<sup>8</sup> T. Mołdawa, *Konstytucyjny system wartości a jakość administracji publicznej – wybrane problemy*, «Zeszyty Naukowe Centrum Studiów Samorządu Terytorialnego i Rozwoju Lokalnego» 2004, No. 8, p. 16.

<sup>9</sup> The act was introduced by a coalition of Socjaldemokracja Polska (Polish Social Democracy) and Polskie Stronnictwo Ludowe (Polish People's Party).

tration offices on the basis of employment contracts – they were not members of the civil service.

The implemented legal solutions were supposed to ensure professional stability for civil servants since they performed state tasks and worked for the state. On the one hand, such an interpretation brought about an increased sense of prestige and importance for nominated civil servants, and for the civil service as a whole, but on the other hand, it sparked criticism from those who believed that a solution that differentiated between the legal status of people employed in government administration would cause chaos.

The problems with the Act from 5 July, 1996 included, for example: insufficient judicial control (access to the civil service and disciplinary measures were determined by the bodies of an inner-administration character); the lack of clearly defined career paths of civil workers; a lack of clarity concerning promotion; and the weak position of the civil service workers (termination of the employment contract could take place after two consecutive negative appraisals). In addition, attention was drawn to delays in the course of implementing the Act.

The basic change in the legal status of civil servants was introduced by the new government<sup>10</sup> in the Act on the civil service from 18 December, 1998 with it applying uniform legislation to all employees of the government administration. This was a departure from the situation when two different acts were applied towards government workers, namely the Act on state office employees from 1982 and the Act on the civil service from 1996. It applied coherent and identical rules to all government administration employees including: (in accordance with the new act) recruitment and selection, employee privileges, the course of promotion and periodical evaluation of employees, and the requirement for professional ethics.

After 1989, government administration employees were included within the civil service corps, and all the workers employed in this sector of the administration were divided into civil servants employed on the basis of an employment contract and civil servants employed on the basis of a nomination (after successful qualification proceedings). The 1998 Act introduced a new system of recruitment to the civil service that was based on the principles of openness and competitiveness, which was supported by legal solutions guaranteeing their realization. The next

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<sup>10</sup> The Act was introduced by a coalition of Akcja Wyborcza Solidarność (Solidarity Electoral Campaign) and Unia Wolności (the Freedom Union).

change was the system of filling senior posts, which in accordance with the Act, meant that senior staff were selected through an open recruitment process that was conducted by the Head of the civil service (further referred to as CS Head). The new organization of the civil service was based on the principle of centralization and concentration of all matters in the hands of the Head of the civil service as the superior body of government administration. The position of CS Head was strengthened by the legislator through the establishment of a relatively long, five-year term of office.

At the end of the government of the coalition of Akcja Wyborcza Solidarność and the Freedom union (i.e. in 2001), politicians introduced a new 'custom': employees occupying high posts (from deputy directors of departments up) became acting employees since people from the political system could be called to perform this function<sup>11</sup>. In addition, successful candidates from correctly conducted recruitment processes were not appointed to the posts. The situation was sanctioned by the new government<sup>12</sup> – the amendment adopted at the end of 2001, in the form of art. 144a, provided for the possibility of employing persons from outside the civil service corps to the positions in state offices and institutions which should have been filled – through an open recruitment process – only by persons with a certificate of the corps<sup>13</sup>. The Commissioner for Human Rights petitioned the Constitutional Tribunal to rule this amendment as unconstitutional by indicating that it violated the essence of art. 153 of the Constitution of the Republic of Poland saying that the civil service corps was created, “to ensure a professional, diligent, impartial and politically neutral discharge of the State’s obligations”. The Constitutional Tribunal decided on 12 December, 2002 that the provision which enabled employment of persons from outside the civil service to high state official posts violated the Constitution<sup>14</sup>. The Tribunal decided that the law threatened the political neutrality, impartiality and professionalism of the state’s tasks they performed. It seems that the ruling on the civil service had but a symbolic meaning – the

<sup>11</sup> J. Paradowska, *Korpus w rozkładzie*, «Polityka» 2002, No. 42.

<sup>12</sup> The coalition of Sojusz Lewicy Demokratycznej (Democratic Left Alliance) and Polskie Stronnictwo Ludowe (Polish People’s Party).

<sup>13</sup> The act from 21 December, 2001 on changing the act on the organization and course of work of the Council of Ministers and the scope of activity of ministers, the act on the government administration sections and on changing some acts; Journal of Laws 2001, No. 54, item 1800.

<sup>14</sup> The decision of the Constitutional Tribunal from 12 December, 2002, reference symbol of the files K.9/02; Journal of Laws from 2002, No. 238, item 2025.

civil servants who were already employed did not lose their jobs since the ruling could not be applied retroactively, and the new civil servants were not to be employed according to that procedure, since the regulations allowed it only until the end of 2002. In practice, it turned out that by 2006 of the 1,400 persons holding higher posts in the civil service there were about 800 of so-called acting employees. It was not until the Act from 21 November, 2008 that the institution of an ‘acting employee’ was abolished.

The year 2005 saw important changes in the political scene in Poland. Three parties, namely Prawo i Sprawiedliwość (Law and Justice), Liga Polskich Rodzin (League of Polish Families) and Samoobrona (Self-Defence) formed a coalition government. It soon appeared that the issue of the civil service was as important for them as it was for the previous administrations. It was as important, but its spirit was understood differently from the essence and mission of the civil service, since the governing coalition showed neither the knowledge nor the understanding of this mission, but only wanted ‘reforms’ that corresponded to their own political interests, and the achievement of full power over public administration. The effect of this way of thinking were two Acts passed in 2006: one bearing the misleading title – the Act on the civil service, and the other, which showed the essence of the implemented changes – the Act on the national reserve of human resources and senior national positions (called the Act on PZK)<sup>15</sup>. The Act on the civil service limited the subjective scope of the service by excluding from it senior positions, the consequence of which was that only middle level employees constituted the civil service. Moreover, only persons who were delegated or transferred from the units of local self-government or the Supreme Audit Office were allowed to hold official posts. This Act was significantly amended on 11 May, 2007<sup>16</sup>. All PhD holders were included within the national reserve.

As assessed by the Supreme Audit Office in 2005, the basic goal for which the civil service was created had not been realized, as the goal was to ensure that the civil service was: “the impartial, politically neutral and competent discharge of the state’s tasks regardless of the ongoing personnel changes in political positions in the government administra-

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<sup>15</sup> The act from 24 August, 2006 on the national reserve of human resources and senior national positions; Journal of Laws from 2006, No. 170, item 1217.

<sup>16</sup> The act from May, 2007 on changing the act on the national reserve of human resources and senior national positions and on changing some acts (Journal of Laws from 2007, No. 123, item 847).

tion". The practice of filling senior positions of the civil service by way of a breach of the competition procedure was particularly negatively evaluated<sup>17</sup>.

This situation, which had been negatively evaluated by the Supreme Audit Office, deteriorated further with the 2006 Act because it broke the principle of political neutrality with the creation of the National Reserve of Human Resources. This was contrary to the opinion of the Constitutional Tribunal of 2002 that stated that a political neutral civil service, with a stable staff of civil servants would help to guarantee that it could fulfill its duties, and that senior positions within it should be held by civil servants. In contrast, under these Acts, a situation was allowed to develop by which official positions in the civil service were held by the employees of state offices, workers from local government, and the Supreme Audit Office by way of a 'transfer', and not through open recruitment, which in an obvious manner broke the principle of equal opportunities, equal access and competitiveness, which lies at the basis of a democratic civil service, as well as art. 60 of the Constitution of the Republic of Poland.

The importance of the civil service was also diminished by the abolition of the institution of the Head of the civil service as a central organ of government administration, by shifting the positions of director-general to the National Reserve of Human Resources, and by the abolition of open recruitment for senior positions, which was replaced by nomination.

As mentioned earlier, the institution of the SC Head was abolished together with the civil service Office subordinated to the former, and the newly established Department of the civil service was subordinated to the Chief of the Chancellery of the Prime Minister, which is a strictly political body. The new solutions did not guarantee the maintenance of political neutrality towards directors general, either. They were incorporated within a political body although they were still the supervisors of employees of the civil service (a politically neutral corps).

The coalition government of Platforma Obywatelska (Civic Platform) and Polskie Stronnictwo Ludowe that came into office in 2007 initially only announced that they would introduce a significant amendment to the civil service acts, but finally they decided to introduce a whole new act on the civil service. The legal change took place together with the Act on the civil service from 21 November 2008, according to which

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<sup>17</sup> Najwyższa Izba Kontroli, *Informacja o wynikach kontroli organizacji i funkcjonowania służby cywilnej*, Warszawa 2005, p. 50.

the institution of the Head of the civil service was restored to being a central organ of government administration in matters related to the civil service. In addition, the National Reserve of Human Resources was abolished and the posts of directors-general of offices, department directors (of parallel units) and deputy directors of departments (of parallel units) were restored to the civil service. Moreover, new regulations concerning the first employment in the civil service were introduced, it was made possible for the members of the civil service corps to take senior positions (with the exception of director-general positions) by way of internal promotion and, finally, all members of the civil service corps were included within a program of periodic appraisal and an individual program of professional development. The Act excluded both the institution of an acting employee on managerial positions in the civil service and the transfer of persons from local self-government and the Supreme Audit Office to the civil service without participating in open recruitment. For the first time, the Act allowed for a possibility of citizens of other European Union countries becoming civil service employees.

Unfortunately, the government *Prawo i Sprawiedliwość* could not free itself from far-reaching political interference concerning the civil service. This was manifested through the composition of the civil service Council, which was first headed by the former Chief of the Chancellery of the Prime Minister, and then by the vice-minister of the Ministry of Treasury, i.e. a person who was politically closely aligned with the government. Furthermore, it was manifested by the proposed method for the recruitment to senior positions in the civil service, when at the final stage a politician decided on the employment of a given candidate.

The *Prawo i Sprawiedliwość* government introduced to parliament a new amendment in 2015. This resulted in the complete politicization of the senior positions in the civil service; the requirements concerning qualifications for senior positions were softened by the inclusion of such additional conditions as having definite work experience, which included the minimum experience of previously holding an executive post in the public finance sector. Moreover, higher positions in the civil service were excluded from the binding periodical appraisals: employees working on the basis of a nomination are not subject to such appraisals. It needs to be added that the employment relationship established on the basis of a nomination is less stable, because a person working on this basis can be at any time – immediately or within a definite period – removed from their position without any justification, including during an illness or while on leave.

While discussing the legal conditions on the basis of which the civil service in Poland operates, one cannot disregard the decisions of the Constitutional Tribunal which issued several opinions on the subject of the political neutrality of the civil service<sup>18</sup>. In a decision from 17 November, 1998 the Constitutional Tribunal decided that “an integral component of the concept of impartiality is political neutrality – meaning not a lack of political views but a lack of their manifestation in professional work”<sup>19</sup>. While, in the opinion of the Tribunal, “political neutrality is above all – as it was indicated – no possibility of the world of politics influencing the activity of the civil service corps: it is about an imperative of political neutrality in performing the state’s tasks – first of all, neutrality towards the interests of political groups and disputes that those groups or particular politicians were involved in – an imperative directed to the civil service corps”<sup>20</sup>. The reasons for this also emphasized that the, “basic and necessary element serving the realization of this goal is such statutory framing of the mechanism of appointing and functioning of the civil service which will guarantee a lack of any, even temporary, possibilities of interference in this aspect from the governing politicians. This mechanism should be then free from the possibility of any interference of politics or attempts to impose concrete solutions”<sup>21</sup>.

Without doubt, law should be constructed in such a way as to provide the civil service with the effective tools to realize the principles of public law and to control the civil service, but it should also include

<sup>18</sup> The sentence of the Constitutional Tribunal from 24 March, 2004, reference symbol of files K 37/03, item 21, M.P. 2004, No. 15, item 247; the sentence of the Constitutional Tribunal from 13 November, 2003, reference symbol of files K 51/02, Journal of Laws 2003, No. 199, item 1952; The sentence of the Constitutional Tribunal from 16 June, 2003, reference symbol of files K 52/02, Journal of Laws 2003, No. 110, item 1059; the sentence of the Constitutional Tribunal from 12 December, 2002, reference symbol of files 9/02, Journal of Laws 2002, No. 238, item 2025; the sentence of the Constitutional Tribunal from 10 April, 2002, reference symbol of files K. 26/00, Journal of Laws 2002, No. 56, item 517; the sentence of the Constitutional Tribunal from 28 April, 1999, reference symbol of files K. 3/99, M.P. 1999, No. 16 item 227.

<sup>19</sup> The sentence of the Constitutional Tribunal from 28 April, 1999, reference symbol of files K. 3/99, M.P. 1999, No. 16, item 227; also, cf. the sentence of the Constitutional Tribunal from 10 April, 2002, reference symbol of files K. 26/00, Journal of Laws 2002, No. 56, item 517. The term “sentence” is quite misleading, better “judgment” or “ruling”.

<sup>20</sup> The sentence of the Constitutional Tribunal from 28 April, 1999, reference symbol of files K. 3/99, M.P. 1999, No. 16, item 227; also, cf. The sentence of the Constitutional Tribunal from 10 April, 2002, reference symbol of files K. 26/00, Journal of Laws 2002, No. 56, item 517.

<sup>21</sup> The sentence of the Constitutional Tribunal from 12 December, 2002, reference symbol of files K 9/02, Journal of Laws 2002, No. 238, item 2025.

regulations that enable its efficient and transparent functioning, the performance of its duties and the use of its rights. Furthermore, law should provide the civil service with tools which enable the realization of citizens' rights.

## **The politicization of the Polish the civil service**

The politicization of the civil service is not a new issue. For example, the Act on the national civil service from 1922 stated that, "a civil servant cannot participate in relations or plots which can disturb the proper course of the state's management or a normal term of office". After 1998, the principle of political neutrality of the civil service found its expression in a number of public disputes and in attempts to guarantee it legally. This was reflected in constitutional, statutory and institutional guarantees as well as in regulations that had the character of ethical codes.

Within constitutional guarantees (in the Constitution from 2 April, 1997) we find such articles as: "A corps of civil servants shall operate in the organs of government administration in order to ensure a professional, diligent, impartial and politically neutral discharge of the State's obligations" (art. 153), and, "All persons shall be equal before the law. [...] No one shall be discriminated in political, social or economic life for any reason whatsoever" (art. 32), in addition to, "Polish citizens enjoying full public rights shall have right of access to public service based on the principle of equality" (art. 60).

Each successive Act on civil service repeats after the Constitution the statement that the civil service was established to achieve goals that included the assurance of the politically neutral discharge of the state's obligations.

The Ethical Code of the civil service from 2002, which is no longer in force, also devoted a lot of attention to political neutrality. It pointed out that the officials and employees of the Polish civil service corps should loyally and reliably realize the strategy and program of the government, regardless of their own beliefs and political views. The Code ordered the civil service corps to treat with caution any influences and political pressures which could lead to impartial attitudes, and not to get involved in activities which could serve party interests. It should carefully consider the clarity and transparency of its relationship with those who perform political functions.

Political neutrality may also be found in the Prime Minister's ordinance No. 70 of 6 October, 2011<sup>22</sup> where it constitutes one of the ethical principles binding the civil service corps. According to this ordinance, the principle of political neutrality means that a member of the civil service corps can make use of the guaranteed freedoms and rights of a human and a citizen, including the right to participate in public life, with certain reservations (§ 17) and these are:

- not visibly demonstrating political views and preferences, especially not conducting any kind of political campaigning on duty and off duty;
- treating with caution any political influences and pressures which could lead to biased activities;
- not undertaking any public activities that directly support activities of a political character
- not raising the suspicion of favouring a particular political party and observing the binding restrictions;
- caring about the clarity and transparency of their relationship with people performing political functions, remembering that these relationships cannot undermine the trust in political neutrality of a member of the civil service corps.

Theoretically, political neutrality is actually guaranteed by the recruitment procedures, the durability of employment and changes in the employment relationship. Recruitment procedures in Poland have always given rise to a lot of controversy since they have frequently broken the principles of equality and impartiality and, besides, under a succession of changing laws, open recruitment has been omitted.

An institutional guarantee in many Acts was the position of the Head of the civil service (a body created by the 1996 Act, strongly empowered by the 1998 Act, abolished by the 2006 Act, and restored by the Acts of 2008 – however, with a weaker position than in the 1998 Act). The strongest legal basis of the CS Head is found in the Act from 18 December 1998, where the Head's competences were supplemented with safeguarding the observance of the principles of the civil service, including the principles of political neutrality. By virtue of the 1998 Act, the CS Head could influence the neutrality of the civil service by: making a plan of preparatory service; giving consent to admit persons who were not civil servants to the recruitment process; conducting qualification proceed-

<sup>22</sup> Prime Minister's Ordinance No. 70 of 6 October, 2011 on guidelines concerning the observance of the civil service rules and on the rules of civil service corps' ethics, M.P. 2011 No. 93, item 953.

ings for employees of the civil service who applied for a nomination; forming teams for the purpose of controlling the course of proceedings; forming recruitment teams and ordering another recruitment process. Thanks to these competences the CS Head was able to ensure that persons holding executive positions in the civil service corps fulfilled the requirements of political neutrality.

The next position in the Polish civil service which was expected to strengthen the principle of political neutrality was the institution of the general director office. As the head of the civil service corps, his task was to safeguard the observance of this principle. The duties of the general director included: overseeing the professional development of civil servants and employees of the service; ensuring that they observed the principle of political neutrality through bans on belonging to political parties and wearing emblems of political parties, creating a negative atmosphere at work for political reasons, discriminating against or showing preference of people or social groups for political reasons, participating in the electoral campaign of a political party and the public declaration of political views. Unfortunately, by virtue of the Act of 24 August, 2006 the position of general director was transferred from the civil service to the National Reserve of Human Resources, and became an object of the political game. What is more, the politically appointed general director was expected to safeguard the political neutrality of civil servants, which seems an absurd solution.

The observance of the principle of political neutrality was also maintained by the civil service Council (in the years 2006–2008 it was called the Public Service Council), whose task was, among other things, to safeguard the correct course of the recruitment process, of obtaining nominations and the filling of senior positions in the civil service. In 2008 the CS Head for the first time prepared guidelines (not legally binding) concerning the practical application of the principle of political neutrality. They provided further specifications to legal regulations included in the Constitution of the Republic of Poland, the Act on the civil service and executive acts to the latter<sup>23</sup>. The guidelines were placed on the website of the civil service, and passed onto general directors of the offices (government employers)<sup>24</sup>.

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<sup>23</sup> Mainly including ordinance No. 70.

<sup>24</sup> *Sprawozdanie Szefa Służby Cywilnej o stanie służby cywilnej i realizacji zadań tej służby w 2017 roku*, pp. 16 and 19, <https://dsc.kprm.gov.pl/aktualnosci/sprawozdanie-szefa-sluzby-cywilnej-za-2017-rok> (10.12.2019).

While analyzing the legislative process concerning the civil service, it is hard not to notice the weight attached by politicians to the idea of 'their' civil service. Indeed, the first draft bill on the civil service was rejected by the Sejm in the first reading, because "the Polish People's Republic was not overthrown to create now legal guarantees for its officials"<sup>25</sup>.

What is more, politicians frequently passed laws or acts of a lower order concerning the civil service, without the help of reliable experts (or ignoring their advice). This process was not compatible with the policy of the European Union, which recommends that ill prepared laws should be replaced by better laws. Meanwhile, in Poland we observe different tendencies, independently of the political option which wins the elections (see: the Act on the civil service of 24 August, 2006). Thus the incoherence of civil service law makes the regulations concerning political neutrality superficial<sup>26</sup>.

The present legal solutions (amended Act from 21 November, 2008 along with ordinances) also do not fully meet the European Union recommendations. For example, the regulations that impose penalties on civil servants who break the rules concerning accepting gifts are unclear. Also, the question regarding the mode of action and ethical principles in a situation when a civil servant leaves the civil service on a permanent basis is not addressed. Another unaddressed issue is what sanctions may be used against people who join the civil service, acquire experience, obtain information and contacts, and then leave and take up employment in commercial institutions and companies, taking the acquired abilities and contacts with them.

In Poland the following relation can be observed: long-term employees have a greater influence on the decision making process, whereas in those institutions which have frequent staff rotations, it is the politicians who have greater influence. Article 38 of the Act on the Council of Ministers<sup>27</sup> proved to be important from the point of view of the professional status of employees holding senior official positions. In case the President accepts the dissolution of a government, resignations are

<sup>25</sup> M. Kulesza, *Opinia na temat systemu funkcjonowania służby cywilnej w obszarach projektowanych ustaw*, prints 552, 553 and 553-A, Biuro Analiz Sejmowych, Warszawa 2006.

<sup>26</sup> K. Mroccka, Ł. Świetlikowski, *Neutralność polityczna członków korpusu służby cywilnej w kontekście biernego prawa wyborczego w wyborach do samorządu terytorialnego – perspektywa prawno-politologiczna*, [in:] J. Itrich-Drabarek (ed.), *Wybory samorządowe – Samorządowe wybory*, Warszawa 2019.

<sup>27</sup> The act from 8 August, 1996 on the Council of Minister, uniform text, Journal of Laws from 2019, item 1171.

automatically handed in by secretaries and undersecretaries of state, as well as voivodes and vice-voivodes. The new prime minister has three months after the establishment of the new government to decide which of these resignations will be accepted. This regulation, which applied in 1997 for the first time, has led four times to the replacement of a few hundred members of the executive staff of the government administration. In 2009, employee turnover for senior positions of the Polish civil service reached 13.5%, while for middle level managers 14.6%<sup>28</sup>. Little has changed in 2018 – employee turnover for senior positions came to 12.2%, and 14.4%<sup>29</sup> for the ministries.

The principle guiding recruitment to the civil service, which is assumed open and competitive, has been frequently broken by politicians regardless of the governing political option. The process of filling senior posts in the civil service through a staff recruitment system was accompanied by obscure practices, accusations of politically steered recruitment commissions, lack of recruitment information or unreliable proceedings. Successive governments have accused their predecessors of unreliable and politicized recruitment processes that are connected with qualifying for the corps and within the corps. A special way of sidestepping the provisions of the Act was the introduction of the function of an acting employee, which made it possible to entrust executive positions in the civil service to persons who did not satisfy the formal requirements, did not have the necessary experience, and who were nominated on the basis of a political recommendation. Another example of the violation of principles was allowing employees of state offices, local self-government and the Supreme Audit Office to hold official positions in the civil service by way of a 'transfer', and not through the recruitment process. By virtue of the Act of 24 August, 2006, open recruitment for senior positions was abolished; instead, discretionary appointments were introduced. In 2008, the so-called wide recruitment was introduced with the final decision on the selection for executive positions in the civil service being determined by the political management of a given ministry or central office.

Studies carried out in 2005 among the clients of state administration offices showed that only 6% of the respondents were able to describe

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<sup>28</sup> *Ogólna diagnoza sytuacji w zakresie zarządzania zasobami ludzkimi w służbie cywilnej*, «Przegląd Służby Cywilnej» 2010, No. 2 (5), p. 12.

<sup>29</sup> *Sprawozdanie Szefa Służby Cywilnej o stanie służby cywilnej i realizacji zadań tej służby w 2018 roku*, [https://dsc.kprm.gov.pl/sites/default/files/sprawozdanie\\_szefa\\_sluzby\\_cywilnej\\_za\\_2018\\_rok.pdf](https://dsc.kprm.gov.pl/sites/default/files/sprawozdanie_szefa_sluzby_cywilnej_za_2018_rok.pdf) (10.12.2019).

the civil service recruitment process<sup>30</sup>. More than half of the respondents who knew the principles guiding the civil service recruitment process thought that it was conducted in a dishonest manner and nobody described it as being definitely honest. Moreover, the recruitment process was assessed as dishonest more frequently by persons who had applied for employment in the civil service, although this might be related to the fact that their applications had not been successful<sup>31</sup>. On the other hand, according to the assessment of the Supreme Audit Office in 2012, the recruitment process was estimated as being consistent with the assumptions of the Act<sup>32</sup>.

Another problem refers to the assessment of candidate qualifications which led to a successful nomination. The consequence of the 1996 debate on the statutory regulation of the rules of the civil service were accusations of biased attitudes and attempts to place people connected with the administration of the Polish People's Republic into official positions. In 2006 the assessment of the qualifications of candidates was moved to the National School of Public Administration, although the School was established for other purposes.

In 2006 the position hence the civil service was deprived of a self-regulatory mechanism. Control over the civil service was then passed onto the Chief of the Chancellery of the Prime Minister, a *stricte* political organ. The institution of the CS Head was restored in 2008, but with a much weaker decision making position in comparison with the act from 1998.

In order to maintain political neutrality the civil service should be devoted to carrying out decisions which had not been made themselves, which practically means separating strategic decisions from executive ones. A politically neutral civil servant does not have to agree with the decisions of the government or the directions of its policy, but he/she is obliged to behave consistently with the political line of the people elected by universal elections, and who stand at the head of the administration. He/she is obliged to carry out official orders with proper diligence. The value of political neutrality is to make the system of recruitment

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<sup>30</sup> J. Itrich-Drabarek, S. Mazur, J. Wiśniewska-Grzelak (eds.), *The Transformations of The civil service in Poland in Comparison with International Experience*, Peter Lang 2018.

<sup>31</sup> *Urzędnik państwowy w oczach obywatela. Badanie realizowane z klientami urzędów administracji państwowej. Porównanie wyników I i II fali*, Raport z badania PBS Omnibus dla Urzędu Służby Cywilnej, Sopot 2005, p. 36.

<sup>32</sup> Najwyższa Izba Kontroli, *Funkcjonowanie służby cywilnej w ramach obowiązujących regulacji prawnych*, Informacja o wynikach kontroli, Warszawa 2012, p. 25.

and promotion independent from changes in the government, which strengthens its institutional memory and ensures the more effective realization of public tasks, especially those of long-term importance. The civil service is also made independent from politics when political positions are clearly indicated, publicly known and distinctly separated from non-political positions, that is those that are filled exclusively on the basis of an open recruitment process.

A technical solution aimed at making the civil service independent from the current political changes is the nomination of an employee and the stabilization of their employment relationship in addition to legal guarantees of the course of their professional career. However, the percentage of civil servants with a nomination in Poland is very low, and nomination itself is continually the object of political attacks<sup>33</sup>.

Unfortunately, excessive politicization has made it difficult, and sometimes even impossible to realize the idea of professionalism in the pragmatics of the activity of the Polish civil service. The influence of politicians on its professionalization has varied depending on the political administration in office, but in the history of the civil service of the Third Republic of Poland, not infrequently it has been treated as political loot.

## Conclusion

The directions of the changes in the Polish civil service should be viewed against the background of the tendencies occurring in all Central Eastern Europe in the context of European integration. At the beginning of the 21<sup>st</sup> century the civil service of this region was characterized by the following features:

- almost complete politicization of the public administration;
- reformatory activities compared to ‘water treading’, making ‘a step forward and a step backwards’ (the exception is the Hungarian act on the civil service passed in 1992);

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<sup>33</sup> Civil service officials accounted for 6.6% of the civil service corps, in: Sprawozdanie Szefa Służby Cywilnej o stanie służby cywilnej i realizacji zadań tej służby w 2019 roku, marzec 2020, s. 7, file:///C:/Users/CSSTiRL%208/Downloads/sprawozdanie\_ssc\_za\_2019\_0.pdf; A. Radwan, *Szefowie robią przymiarki do cięć, urzędnicy do protestów*, *Gazeta Prawna*, 27.04.2020, <https://serwisy.gazetaprawna.pl/praca-i-kariera/artykuly/1472480,zwolnienia-w-administracji-ciecica-protesty-urzednikow.html>

- frequent violation of such ethical principles as political neutrality or honesty;
- no mobility of the state service – career and promotion possibilities are closely connected with whether a given person is ready to modify their political beliefs;
- high level of decentralization and break-up of competences in the field of staff policy – no central recruitment, minimal possibilities of staff flow between the ministries, no common structure in the sphere of remuneration, significant differences in remuneration, the possibilities of professional promotion built within a given sector;
- frequently, the decisions on employing or dismissing the staff lie not within the competences of directors, central department or agency but particular ministers;
- the public service has a bad image due to politicization;
- inflexible working conditions rarely connected with individual effort, motivation or possibilities of development;
- low salaries which result in treating work in public administration as unattractive to many desirable candidates;
- the majority of countries based the civil service on the career model (the exceptions being Estonia and Bulgaria);
- frequent amendments to the government legislation on the civil service<sup>34</sup>.

It should be assumed that the model of the separation of the functions of the political apparatus and the administrative apparatus is still viewed by society in the 21<sup>st</sup> century as an ideal model of a democratic state. This view is especially true in Poland, and it has been built into the foundations of its democracy from the very beginning, in particular the importance of being ‘too political’ or ‘not political enough’ (depending on the point of view) with regard to relations between the political authority and the administrative authority. A clear dividing line between them is sought. A division occurring among the civil servants can also be observed. This is manifested in the reduction of the role of middle and low level civil servants to executors of decisions, while the senior state officials take part in the decision making process.

The problems of the politicization of the Polish civil service (which is not an exceptional phenomenon, but characteristic of all countries of Central Eastern Europe that have undergone a social and political

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<sup>34</sup> Cf. D. Bossaert, Ch. Demmke, *Shużba cywilna w państwach akcesyjnych. Tendencje i wpływ procesów integracyjnych*, Łódź 2003.

transformation) have resulted in manipulating the civil service, both its external and internal dimensions, and unfair recruitment and the discretionary nature of promotion, together with many other controversial issues connected with this matter. All this seems to point to the superficiality of one of the fundamental values, which is political neutrality. Only in the long term aspect, when certain conditions are satisfied, can it prove to be truly observed<sup>35</sup>.

The process of building the ethos of the civil service corps in Poland has been made difficult due to the phenomena mentioned above, such as the continuous changes in the law, a personnel policy based on promoting political loyalty at the cost of professionalism and reliability, and prioritizing current needs over long-term needs. This has had undue influence on the attitude and concept of mission of the civil service among the members of the corps of this service. Although the profession of a civil servant in Poland does not garner much public trust, it is characterized by a special bond of trust between the person who renders services within the framework of their profession and the service recipient. People allowed to pursue this profession must take a test of knowledge, skills and predispositions. According to Michał Kulesza, the civil service can be compared to a plant which did not get rooted in a garden. That is why – instead of building a professional civil service – “a return is made to the nomenclature”. Kulesza drew attention to the immorality of each successive government, which declared respect for principles, but then, “introduced their own people through the back door”<sup>36</sup>.

The functioning of a democratic state has inherent institutionalized relations between public administration and political authority. For Polish public opinion the system of patronage or the ‘division of the loot’ is associated with corruption, nepotism and wrong staff management. Despite this, the filling of positions in the civil service in Poland is still treated as the (due) electoral loot.

Politicians (ministers), as well as public opinion call for the professional performance of tasks by the civil service corps. Without a reliable civil service free of political manipulations, this is not possible. In Poland changing the role and position of the civil service needs the support of different social groups, political elites, the officials themselves and coop-

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<sup>35</sup> Z. Szonert, *Aksjologia służby publicznej oraz stanowienia i stosowania prawa*, «Zeszyt Prawniczy» 2005, No. 1.

<sup>36</sup> M. Kulesza, *Karuzela z urzędnikami*, „Gazeta Wyborcza”, 25 października 2006, p. 21.

eration of researchers and practitioners<sup>37</sup>. The task of the civil service in Poland is to recognize and separate the political and the executive elements of the activities of public administration.

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<sup>37</sup> B. Kudrycka, *Zmiany w pozycji i statusie urzędników administracji publicznej. Nowe wyzwania i trendy*, «Służba Cywilna» 2002, No. 4, p. 9.