

PUBLIC ADMINISTRATION BETWEEN CONTROL AND SUPPORT

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ABSTRACT

The role of the public administration in modern states is diverse and extensive. The state administration is traditionally connected with the activity of lordship and decision-making. The municipality and community administration is more user-oriented and supportive in difficult life situations. Both types of public administration execute permanent and daily control of their users. They check how the addressees follow laws, by-laws and orders or instructions of the public administration. Contemporary modern global society born new challenges and for both parties of the relationship. The paper examines the needs of users for a more friendly, supportive approach. The public administration's daily practice must connect particular and general interests regarding, on the one hand, the protection of human rights, on the second-hand goods of a community or the whole society. The paper analyses the thin line between support and control when delivering public service based on the Czech Republic experience. The article focuses on managerial and legal issues and possible tools for transitioning from lordship to procuring and assisting public administration.

***Keywords:** public administration, control, support, human rights, public and individual interests*

INTRODUCTION

Public administration forms the most significant part of modern welfare states activities. The theory and the practice approach the notion of public administration from various points of view. The most general definition would be that public administration is a management of public affairs in the public interest. The theory describes the administration generally as the permanent management of everyday matters. The governance and public administration stand in the centre of attention both of legal theory and practice.[1]

Traditionally, the role of the public administration was decision-making, including the control of non-subordinated persons and entities. Modern public administration approaches much more to the remote administration, underlining that the new methods and the need of coming to the public administration to communities and citizens blur the differences between both types of administrations. [2]. As interdisciplinary research and scientific branch, administrative science evolves knowledge about the public administration's performance, exploiting interdisciplinarity of social sciences. Indeed,

administrative science embrace law, sociology, politology, social work and pedagogy.[1] Influenced by the mentioned theory and the demands of the practice, the public administration is steadily moving from the lordship to supporting activities. The paradigm of public administration as a decision-making authority would not stand in the modern, globalised, digitised society, facing various dangers, like cyber, health, natural or other risks. The paper examines the transition from the decisive-making authority to supporting the user-friendly public administration. The author pins together the legal and social fundamentals of public administration. This approach enables to argue the addressed issues and analyse the thin line between support and control when delivering public service. Recent and imminent threats as the pandemic of SARS-Covid 19 or tornado disasters, so far unknown in European countries, create societal demand for new approaches and innovative solutions. There is a wide range of research articles on new public management, new governance, or collaborative governance. Still, the interdisciplinary scientific comprehension of current tasks in modern public administration under unexpected conditions only begins. There is a wide gap between the needs of the practice and the theory. The author would like to start the discussion about the possibilities of perception of the supportive public administration. The paper uses the methodology of analysing legal notions, laws, and the author's practices as a law lecturer for public officers.

SOCIAL RIGHTS, PRIVATE AND PUBLIC INTEREST

Contemporary European Union member states denote themselves as the rule of law and welfare states. The protection of human rights and dignity is closely related to ensuring economic and social rights, which aim backwards to ensure dignified daily life. The Charter of Fundamental Rights of the European Union [3], as well as the Charter of Fundamental Rights and Freedoms of the Czech Republic (Charter), elaborate a wide range of rights enabling free choice of profession, social security, fair remuneration for employees, trade union and other labour protection activities, healthcare services, based on public health insurance or additional assistance for vulnerable groups and in adverse living conditions. [4] The welfare state as a public law corporation could be denominated as a general system of organisational, material, legal and other support of persons and legal entities. [5]

The mentioned economic and social rights require laws and by-laws for their practical implementation. In its decisions, the Czech Constitutional Court reiterates that social rights can be exercised only within the bounds of laws. So, the legislature has the right to set specific conditions for implementing social rights. Nevertheless, the statutory regulation may not conflict with constitutional principles, deny or annul the social rights outlined in the Charter. [6]

The government, as the supreme body of public administration, is a lawmaker. Competent administrative authorities and officers execute entrusted general tasks enshrined in the legislation. The public administration ensures

supervision and assistance on the labour market, including regulating entrepreneurship and relations employer-employee. Traditionally, the public administration organises and supervises social cohesion and compulsory educational activities. [5]

The individual is a starting point for the state and all its bodies, including the public administration. They all are constitutionally bound to protect and preserve her rights. [7] However, the task of public administration is not only to protect the individual interest but also the interests of the community and society. Whilst the individual interest can be precisely pointed out; the public interest is an indefinite concept that the public administration must always interpret according to the case circumstances. The wide margin of appreciation the public authority has in the decision-making procedure disabled to evolve either unified or consistent theory to define the public interest generally. [8] The public interest could be described as the best response to a situation when all parties concerned accept the solution or the decision.

When ensuring social rights, the public administration has many tasks and activities. It delivers decisions, supports, and helps. The theory denominates this type of public administration as procurement or assistance as it varies between lordship, control, and support. [9]

The author aims to highlight the specifics of the support in the public administration on the practical examples of public guardianship, as described below. Based on the court decision, the public guardians legally represent and decide on behalf of the person. At the same time, guardianship means supporting the rights and self-determination of the ward.

BETWEEN CONTROL AND SUPPORT IN PUBLIC ADMINISTRATION

Since the 19th century, social support has been based on state help when the individual cannot care for herself. When deciding about public rights in the social area, public authorities dispose of many vested powers. The lordship administration forms thus the basis for determining claims of persons in need. The need for state intervention had increased in the pandemic. So far, the welfare state has targeted persons. Suppression or even temporary closures of whole economic sectors focused on entrepreneurs – persons and legal entities. The public administration had met entirely new requirements for its activity. The formal decision to grant social aid had not been sufficient. The requirement was to help restart the affected economy in other conditions and in a new way. Public authorities needed to find new approaches and procedures. It is impossible to ensure the operation of private entities from public finances for a long time. That is why the public administration should seize processes and methods exploited in practical sciences, which form the constituent part of social rights protection.

Social work is substantial among these sciences. "Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. The social work profession recognises that human rights need to coexist alongside collective responsibility. Idea of collective responsibility highlights the reality that individual human rights can only be realised on a day-to-day basis if people take responsibility for each other and the environment, and the importance of creating reciprocal relationships within communities." [10]

Social work is a substantial part of public administration at the state and community levels in welfare states. Social work, as an ambivalent practise, provides individuals with assistance and also exercises control over them. The power entails much more risk to violate rights when imposing obligations. [11] That is why social work and the public administration, in general, should become much more supportive and positively motivating and managing entities than lordship authorities.

PUBLIC GUARDIANSHIP

Generally, the guardian acts on behalf of a person with low or high age or some disorder which disables her in protecting the interests of taking care of the life. Usually, the administrative authority or the court appoints the guardian. The guardian could be private or public. The guardian acts in a single case, for example, by the court proceeding with a minor. More frequently, the guardian becomes a permanent custodian.

The Czech Civil Code provides for guardianship in connection with the person of unknown whereabouts or with the limited legal capacity or other severe circumstances in Sections 465- 484 of the Civil Code, the Act. No. 89/2012. [12] The protection of a person or the public interest is the main reason for appointing a guardian. The Civil Code and the legal practice prefer to nominate a person in a good relationship with the ward. However, many relatives are afraid of the legal responsibility, and so they reject guardianship. In such a case, the municipality, where the person has permanent residence, becomes a public guardian. The public authority is not allowed to reject guardianship.

In the Czech Republic, there is no special law on public custody, so the activity is governed partly by the private law-the Civil Code, partly by the administrative law-the Act No. 128/2000 Coll., On Municipalities. Based on the legal regulation, the mayor becomes the legal guardian, but she always appoints the public officer of the municipality to execute the daily care. The position of the public guardian is very often connected with the social services offered by the municipality. It is pretty standard that the public guardian is a municipality social worker, too. So the position covers and secures both control and support.

The author, together with the master student Ms Helena Fejtkova conducted a quantitative survey on the challenges for the public guardians. The student processed the data collected and worked then on her diploma thesis—Public Guardianship in the Pardubice Region, Czech Republic. The author supervised the thesis, which the student successfully defended in May 2021. The student, who works as a social worker and public guardian, utilised her practical experience, and it gave them a theoretical basis, which she acquired by studying at university. The knowledge she had processed and transformed, she would reuse at her profession.

The author set forth the main objective of the survey: to find out the issues that public guardians have to copy with when executing their office. The aim is divided into three sub-objectives.

- how public guardians evaluate the current legal basis of public guardianship,
- what difficulties public guardians face most often in their practice,
- how public guardians assess the performance of public guardianship.

Because of the exploring, as mentioned earlier, the author had not determined any assumptions that the survey should have confirmed.

Eight participants (respondents) from smaller municipalities answered, during a personal interview, answered 22 survey questions, into which the sub-objectives were transformed. Due to the nature of the leading research goal, the author had chosen a qualitative research strategy. Qualitative research enables the researcher to investigate and find out about peoples' experiences and what is important to them. The survey helped to understand human experience and the emotional feelings of respondents. [13] So the qualitative survey had captured the issue better in-depth and created a comprehensive view of the performance of public guardianship in the selected locality.

The student exploited the research method of questioning in the form of a semi-structured interview. A semi-structured interview combines the advantages and disadvantages of extreme interview conditions, as it is free and partly unstructured. Some freedom is appropriate to create a more natural contact between the respondent and the interviewer. On the other hand, a certain degree of standardisation facilitates subsequent classification. [14]

When processing the survey results, the author identified expected allegations and issues she had not directly examined. As the first problem, the author recognised that the public guardian does not need specific qualifications or education. The guardians must have just a college education and pass the exam of the public officer.

Table 1. *Points out the mentioned issue of qualification.*

Respondent	Age	Education	Years of experience	Cumulation of public guardian and social worker
1	48	Social-legal college	3	yes
2	40	Economic college	6	yes
3	57	Bachelor of public administration	6	yes
4	43	Bachelor of Law	4	no
5	57	College of administration	7	yes
6	53	Economic college	10	yes
7	37	Bachelor of Healthcare	4	yes
8	45	Bachelor of Philology	3	no

Source: Own source

The author underlines that unclear requirements for education may lead to different approaches towards, but also may influence the survey results. Despite this, the respondents agreed that the main challenge is that the legal regulation of public guardianship is still missing. They generally considered the legislation to be too fragmented and inconsistent. Moreover, its interpretation and practical application in the courts vary. That is why the wards' rights protection is very often uneasy for them.

The most critical challenge for the guardians is to apply an appropriate method when considering their wards' economic, legal, and daily matters. They emphasised the need to differentiate when they must decide, when it is appropriate to control and when they assist or support.

The respondents underlined that the cumulation of social work and public guardianship only helped them use all their competencies and knowledge. Sometimes there is a vast workload, and they are afraid of the burn-out. They would also appreciate continuous education about the latest legislation and new social work trends.

Public guardians, being the community public officers, constitute a specific and at the same time unifying element within the public administration. Relationship professions, like social workers or public officers, when providing public services .havce to comply with responsibility for the proper provision of services to the client on the one hand, on the other, their commitment to the employer's instructions and especially to the legal regulation within the rule of law. The conflict, which has been termed dual loyalty, was and still is often seen merely as an ethical, not legal, conflict in which the public officer must decide between the interests of the client and the interests of third parties. Especially by

the public guardians may get wider with unexpected consequences, as it often takes the form of a clash of different, often conflicting, legal obligations.

CONCLUSION

The paper argues two faces of the public administration. The first one is the lordship controlling authority, supported by legally vested powers. The second one is informal, though backed by the fundamental principles of constitutional and administrative law. The main focus being the legality of the public administration and all actions of its officers and employees. This principle allows the public authority to do what the law permits or imposes and only the means defined in the law. The imperative of social peace requires that the public administration assist persons and legal entities in enabling them to build dignified and economically sustainable life as much as possible. Of course, the administrative authority cannot resign on the principle of legality, and it cannot impose support.

The author examined the oscillation between control and support on the example of public guardianship. The survey indicated that public administration, especially when controlling, needs to stick to fixed boundaries. Even if the public custody and the social work in the public administration denominate themselves as helping professions, they have to keep the principle of legality and the ward's rights or a client. [11]

In practice, the public officer, who cumulates social work and public guardian, must differ between both parties. When she acts as a social worker, she is more likely to support or assist. As a public guardian, the controlling role prevails. The more the ward is incapable of taking care of daily matters, the more decisive and controlling is the role of the public guardian.

The primary issue is that in a daily work marathon, the dual personality of the public worker cannot switch between both roles or positions. The Czech administrative science should examine the conflict of dual loyalty. However, neither the administrative theory nor practitioners devote much attention to this challenge because they usually consider it an issue of health care or legal advisory. Based on the survey, the author argues that this problem intervenes with the public administration. As soon as the public administration moves from decisive authority to supportive one, it exercises control simultaneously. As long as the public financial resources cover the cost of the public administration, it is necessary to use the funds effectively. Furthermore, it is the task of the control that the addressee the control complies with all the requirements for support and help.

The continuous long-life learning of public officers and employees forms the core of the public administration's efficiency, as the respondents in the survey mentioned. New tasks and challenges in the digital world will deepen this

necessity. The public administration should introduce managerial procedures, which have been used so far in the private sector. The era of digitisation enables the cross-border exchange of knowledge and system thinking instead of focusing on isolated phenomena.

The public administration depends on the quality of its performers. So it is necessary to support the personal development of each public officer and employee. The public administration needs daily learning and continuous improvement for transforming into a learning organisation. The learning organisation enables shifting minds and creating the reality in moving in a supportive and user-friendly organisation. [15]

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