

# Introduction to Polish Administrative Law

## *Second Revised Edition*

Wprowadzenie  
do polskiego  
prawa administracyjnego

*Wydanie drugie – zaktualizowane i poprawione*

**Michał Możdżeń-Marcinkowski**



Wydawnictwo C. H. BECK

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# **Introduction to Polish Administrative Law**

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## List of abbreviations

|                       |   |
|-----------------------|---|
| ABW .....             | <i>Agencja Bezpieczeństwa Wewnętrznego</i> (Domestic Security Agency)           |
| AUW .....             | <i>Acta Universitatis Wratislaviensis</i>                                       |
| CAP .....             | Code of Administrative Procedure (pol. <i>KPA</i> )                             |
| CEI .....             | Committee of European Integration (pol. <i>KIE</i> )                            |
| <i>Cf.</i> .....      | <i>Confer</i>   |
| <i>Dz.U.</i> .....    | <i>Dziennik Ustaw</i> (Official Journal)  |
| e.g. ....             | exempli gratia  |
| ECJ .....             | European Court of Justice (pol. <i>ETS</i> )                                    |
| ed. ....              | editor  |
| etc. ....             | et caetera  |
| <i>ETS</i> .....      | <i>Europejski Trybunał Sprawiedliwości</i> (European Court of Justice)          |
| EU .....              | European Union  |
| <i>GIODO</i> .....    | <i>Generalny Inspektor Ochrony Danych Osobowych</i>                             |
| i.e. ....             | that is   |
| <i>IPN</i> .....      | <i>Instytut Pamięci Narodowej</i> (National Memory Institute)                   |
| <i>KIE</i> .....      | <i>Komitet Integracji Europejskiej</i> (Committee of European Integration)      |
| <i>KPA</i> .....      | <i>Kodeks Postępowania Administracyjnego</i> (Code of Administrative Procedure) |
| <i>KRS</i> .....      | <i>Krajowy Rejestr Sądowy</i> (National Court Register)                         |
| <i>NLI</i> .....      | National Labor Inspectorate (pol. <i>PIP</i> )                                  |
| No. ....              | Number  |
| <i>NSA</i> .....      | <i>Naczelny Sąd Administracyjny</i> (Supreme Administrative Court)              |
| <i>OJ</i> .....       | Official Journal (pol. <i>Dz.U.</i> )   |
| <i>op. cit.</i> ..... | <i>opus citatum</i>   |
| p. ....               | page  |
| <i>PIP</i> .....      | <i>Państwowa Inspekcja Pracy</i> (National Labor Inspectorate)                  |
| <i>RAC</i> .....      | Regional Administrative Court   |
| <i>RM</i> .....       | <i>Rada Ministrów</i> (Council of Minister, Cabinet)                            |
| <i>RP</i> .....       | Republic of Poland  |

## List of abbreviations

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|                  |  |
|------------------|--|
| <i>RPO</i> ..... | <i>Rzecznik Praw Obywatelskich</i> (Commissioner for Citizens' Rights Protection, Ombudsman) |
| <i>SAC</i> ..... | Supreme Administrative Court (pol. <i>NSA</i> )  |
| <i>SCC</i> ..... | Supreme Chamber Control  |
| <i>SKO</i> ..... | <i>Samorządowe Kolegium Odwoławcze</i> (local Self-Government Bard of Appeal)                |
| <i>ST</i> .....  | State Tribunal   |

English abbreviations are written straight; their Polish equivalents, if used in this book, are given in brackets.

Polish and Latin abbreviations are written in italics; their English equivalents, if used in this book, are given in brackets.

## Preface

It is a difficult task to translate Polish legal definitions and institutions in to English. The English and Polish legal systems are so different that finding either the exact English term or even the equivalent words and phrases is sometimes impossible. In many cases, it has been necessary to simplify the meaning of the Polish phrases instead of translating them directly.

In the following work I have drawn specifically from the works of Professor Ludwik Bar<sup>1</sup> and Professor Barbara Z. Kielar<sup>2</sup>. I have also based my interpretations on some contemporary treatises on Polish law written in English by Professor Jolanta Jabłońska-Bonca<sup>3</sup>, Professor Hubert Izdebski<sup>4</sup>, Professor Jacek Jagielski<sup>5</sup>, and Professor Anna Wyrozumska<sup>6</sup>. I realize that no exact translation is attainable, so my intention has been only to find the nearest possible equivalent in English. This book should be considered as the first step to further linguistic discussions concerning administrative law. First and foremost, this book is intended for English-speaking readers who study or use Polish administrative law.

This book collects a fundamental compendium of knowledge about the most important Polish administrative law institutions. The concept of its construction and the outline of its contents was created whilst I was teaching at Warsaw University. It fulfills the requirement for the plain transmission of legal content for audiences other than Polish law students. Because of its basic structure, this book does not include issues of substantive administrative law and its administrative procedures. The main aim of the book is to help English-speaking students to get acquainted with the basic institutions within Polish political (organizational) administrative law.

dr Michał Możdżeń-Marcinkowski  
Warsaw, June 2012

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<sup>1</sup> L. Bar (ed.), *Obcojęzyczny słownik prawniczy. Część polsko-angielska (wersja robocza)* [*Foreign-Language Legal Dictionary. Polish-English Part (working version)*], Warsaw 1972.

<sup>2</sup> B.Z. Kielar, *Angielskie ekwiwalenty polskich terminów prawno-ustrojowych* [*English Equivalents of Polish Terms in Constitutional Law*], Warsaw 1973.

<sup>3</sup> J. Jabłońska-Bonca, *Introduction to Law*, Warsaw 2004.

<sup>4</sup> H. Izdebski, *Introduction to Public Administration and Administrative Law*, Warsaw 2006.

<sup>5</sup> S. Frankowski (ed.), *Introduction to Polish Law*, The Hague 2005.

<sup>6</sup> A. Wyrozumska (ed.), *Introduction to Polish Law*, Lodz 2005.

## Foreword

This book is a concise compendium of information about doctrinal bases and institutions of Polish administrative law – intended, according to the author, for English-language readers, studying or practicing Polish administrative law. From the knowledge of my own teacher's and practical experience, I can say that the circle of potential readers of this book exists and grows. As a person teaching both, public administration and administrative law, I needed such study in the English language, which would present some problems from the perspective of Polish doctrine. As a matter of fact, my recent study concerning an Introduction to Public Administration and Administrative law (also translated into Russian) was extensively used by the author.

This book – as a compendium – contains information of a general character. It would, however, be difficult to expect solutions to new problems. It is necessary to notice that the author (probably consciously) isn't giving his opinion on issues, which are relatively new in jurisprudence.

Surely, this study is fit for publishing and I truly believe, it should be published fast.

Prof. dr hab. Hubert Izdebski

## **Author's note**

This is a second, revised and improved edition of the compendium concerning an outline of Polish administrative law. It should be mentioned that because of a dynamic development of Polish and European science of public administration, this book may not include some of the legal nomenclature from documents, such as the European Code of Good Administrative Behaviour, the European Administrative Space (EAS) or the European regulation concerning territorial units for statistics (NUTS).

In most cases this book relies on traditional terminology accepted by the Polish science of administrative law. Some efforts will, however, be needed to standardize certain Polish and European legal terms and definitions. It should be also admitted that the principle of support, can also be understood as a principle of subsidiarity. In some cases the position of the under-secretary of the State is translated as a vice minister.

Michał Możdżeń-Marcinkowski



# **PART I**

## **Basic Definitions in Polish Administrative Law and Juristic Doctrine**





# Chapter I

## Polish Public Administration

### I.1 The term ‘administration’

I agree with the opinion of Professor Hubert Izdebski, who said: ‘It is sometimes said that in 1989, as a result of the ‘Round Table’ agreements of the representatives of the government and of the ‘democratic opposition’ followed by the parliamentary elections in June, which were won by the opposition, Poland entered its ‘period of transformation’. It was a transformation from decaying ‘real socialism’ into a liberal democracy, based upon principles of the democratic state of law and market economy as well’<sup>7</sup>.

The word **administration** (*administracja*) is etymologically linked to the Latin word *administro*, *administrare*, which means to serve, conduct or manage. Today, the term ‘administration’ is defined in several different ways. We can speak specifically of **private administration** (*administracja prywatna*), which is comprised from a board of directors, management, some sphere of matters for private use and of **public administration** (*administracja publiczna*)<sup>8</sup>.

**Administrative law** (*prawo administracyjne*) does not deal with private administration. Rather, administrative law usually interferes with private administration, as in the constant inspection or supervision of public organs<sup>9</sup> (governmental authorities) over ‘privatized public tasks’ or

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<sup>7</sup> H. Izdebski, *op. cit.*, p. 109. We must also admit that the origin of the democratic changes and the role of the ‘Round Table’ remain controversial subjects in contemporary political discussion. Nevertheless, we can certainly agree that, for Poland, the year 1989 marks the beginning of a return to democracy after 44 years of Communist occupation.

<sup>8</sup> As it was said before, in Polish legal language (and in the Polish language in general), the English term ‘administration’ goes with the additional word ‘public’. Therefore ‘public administration’ is the name for the whole apparatus of public authorities, their auxiliary entities (like offices) and other bodies authorized by laws or arrangements to exercise state power.

<sup>9</sup> The Polish legal term ‘organ’ and its comprehension will be presented in Chapter 6 of this book, concerning public authorities.

commissioned functions of state administration<sup>10</sup>. Undoubtedly, the term ‘public administration’ is fundamental to administrative law. Nevertheless, there are some in Polish literature, such as Franciszek Longchamps, who believes that the terms ‘administrative law’ and ‘public administration’ should be researched separately.

In the midst of such a variety of interpretations of public administration, this course book relies on the definition suggested by Jan Boć. According to this author, **public administration** is understood to be ‘overtaken by the state and realized by its pending bodies and also by the bodies of local self-government fulfilling collective and individual needs of citizens, resulting from the people’s coexistence in communities’<sup>11</sup>. It is possible to illustrate this definition by considering exemplary negative and positive definitions of public administration.

The **negative definition** (*definicja negatywna*) is considered the classical one and was created by German thinkers Otto Meyer and Walter Jellinek. It was Stanisław Kasznica and Antoni Peretiałowicz who made their adaptations to suit Polish needs. The basis for the original definition was Montesquieu’s rule of three divisions of authority. According to that definition, public administration is everything that is not legislative power or administration of justice. In other words, administration is the state activity that occurs outside of the legislation and administration of justice.

The **positive definition** (*definicja pozytywna*) of public administration stresses those elements that perform administrative functions. The term ‘public interest’, which is an element of public administration, identifies the structure of the subjects which perform the administration. In this manner, we come to the **subjective definition** (*definicja podmiotowa*) of public administration, which takes the perspective of the subjects of administration to define those bodies that exercise administration and the nature of their structure.

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<sup>10</sup> In Polish doctrine, the term ‘privatization of public task’ is described as a set of elements including mostly an exercising of power to manage the public property on non-public bodies. Sometimes, it deals with transgression of statutory powers; see: S. Biernat, *Prywatyzacja zadań publicznych. Problematyka prawna* [Privatization of Public Tasks. Legal Issues] for more detail.

<sup>11</sup> J. Boć (ed.), *Prawo administracyjne* [Administrative Law], Wrocław 2003, p. 16.

The **objective definition** (*definicja przedmiotowa*) takes the perspective of the bodies of law to describe which motions are included in administrative activities. It, therefore, defines public administration as an activity of administration conducted by competent subjects (bodies).

## **1.2 Features and functions of public administration**

A fundamental feature of public administration is that it is a social phenomenon. All of its other features stem from this fact. The most important prerequisite of the social character of public administration is that it regulates social coexistence. Therefore, it must be oriented towards the public interest. Public administration, both as an organization and activity, is based on law and acts within the limits of law, though it may occasionally refer to customs adjudications and technical norms.

The administration (as an organization) acts on behalf of and on account of the state or the local self-governing community. They are a statutorily empowered authorities. This means that they may use coercive measures secured in binding law. Public administration as an organization always acts as a non-profit entity. Even if it conducts profit-oriented activities (management), these do not constitute its main purpose but they are rather an indirect pursuit of the public interest. Public administration as an activity is always characterized by its purposefulness, action and initiative. Public administration should always use professional personnel, so-called clerical staff.

## **1.3 Classification of public administration in reference to its function**

The functions of public administration are often considered as tasks or purposes. We can distinguish basic functions from those that the state sets as its general policy, and from those operational functions defined and verified through the current activity of the state administration.

**Regulatory administration** (*administracja władcza*), also called classical administration is most often realized by issuing administrative decisions and other administrative acts.