# CURRENT ISSUES OF THE PUBLIC SERVICE AND ADMINISTRATION. THEORETICAL BASES AND EXPERIENCE IN THE CZECH REPUBLIC

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***Abstract***

*In the introductory remarks, the paper highlights the shared past of the central European countries and the most important historical moments for the development of the public administration. Further, the paper points out various theoretical approaches to the definition of the term public service, public administration and its classification concerning the academic background in the Czech Republic. Subsequently, the primary public service legislation in the Czech Republic is referred out. On this basis, public service and administration challenges and issues are formulated. The authors approach the concept of public service in a broader sense, focusing on public service in general, service of the state officials, officials of territorial self-governing municipality units, as well as public services provided by the private sector. The paper examines the new role of the public administration in the global health and public services crisis. The authors evaluate the possibilities of the new governance methods for re-directing the public service and administration to the new role of the crisis and post-crisis managers.*

***Keywords*****:** *public administration, public service, state government, public officer, self-governance, community and municipality, new governance*

***JEL Classification:*** K23

## 1. Introduction

The states of Central Europe share the collective past within the Austrian-Hungarian monarchy. They also have many similar current issues in the economy and law. The public administration is not an exception. The historical development of the theory, as well as the practice of public administration, enables academicians and practitioners share ideas and look for solutions of current issues and new challenges in the public space within the European Union (EU).

The new public administration started to develop during the reign of Maria Theresia, based on the financial needs of the monarchy, exhausted by the war in the mid of the 18th century. The revolutionary year 1845 brought new challenges and issues for the state administration. The Austrian-Hungarian monarchy adopted the so-called Stadion's constitution with the principle of municipal governments. This document, though never introduced into practice, started to divide the delegate and independent competence of municipalities. The first professional and educated public officers and servants came to serve in as public officers in municipalities after the new adjustment of the public service in 1850.[3]

By the end of the 19th century, the theory of public administration, the so-called camera studies, started to develop. Camera studies focused on multiple studies in economy, law, and technical sciences to enable effective public administration of the monarchy.[4] Prominent leaders, like F. Weyr or J. Hoetzel deployed the theory of public administration, including the public service, after the disintegration of the Austrian-Hungarian monarchy in the new Czechoslovak Republic.[5] History as Magistra vitae helps the Central European states to understand better current issues and challenges of the public service and administration in the 21 century.

Having used the methodology of historical interpretation, the authors would continue with the analysis of theoretical approaches to the definition of the term public administration, public service and their classification. Based on the national Czech legislation and case-law, the authors highlight

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[4] Müller, K. *Inovace-vědění-instituce: k výzvám současné doby (Inovation-knowledge-institutions: about the challenges of the new era).* Karolinum, Praha, 2017, p. 100.
[5] See the bibliography and footnotes 8, 9.

public service provided by the state as well as self-governing municipalities and the public services offered by the private sector. The paper argues and evaluates the new role of the public administration in the global health and public services crisis. In conclusion, the authors critically examine the possibilities of the new governance methods for re-directing the public service and administration to the new role of the crisis and post-crisis managers. The research aims to contribute to the discussion.

## 2. Public administration and public service

The theory describes the administration generally as the permanent management of everyday matters.[6] Most generally the contemporary theory differs between private and public administration, underlining that the new methods and the need of approaching the public administration to communities and citizens blur the differences between them[7]. Indeed, the introduction of public-private-partnership (PPP) into many projects of social interest, needs the use of managerial methods, typical for private spheres, like excel reporting, evaluation of on-going results, time-sheets or digitisation. Another general denomination says that the public administration is the administration of public matters or is the activity, which is neither law-making nor judicial.

The authors' lean-to divides the public administration into the state administration and the self-governance of communities/municipalities. This splitting answers the best the subject and purpose of the paper. The authors examine the public service by the state and self-governing territorial units. The authors use descriptive method to examine an administrative authority or body (formal public administration) and the decision-making or other power vested to the administrative authority (material public administration). This distinction enables a better explanation of the examples of approximation of public service to the daily community practice. It highlights the deflection from the lordly decision–making to the participation of public administration addressees and users.

The Czechoslovak administrative law theory and practice started to explore the public service more in-depth in the twenties of the 20th century, id est during the so-called first republic, after the World War and before the Second World War. Weyr wrote: *"The state service is a particular type of the service, executed by the employees of the state, who conclude the contract with the state as an employer and they are paid for it".*[8]

The notion of a public servant or officer was not defined in legal acts but was developed by the theory as well as by the case-law. Any person serving and employed by the public service holder was considered being a public servant in a broad sense. Nevertheless, the type of service relationship and the authorised public power, executed by the public servant, formed different types of public servants and officers. The primary practical, legal and theoretical distinction was whether the public servant served by the state, municipality or self-governing professional organisation.[9]

The contemporary theory follows up these ideas. Academicians examine the public service as a unique form of employment by the public employer. The state public service means that the state employees carry out their service at the public administration offices. These are civil public servants. The other ones are public officers in public and army corps. Altogether they belong to the public servants.[10] Hendrych underlines that public service is one of the leading institutes and features of the European public law, mainly administrative and constitutional in the 19 at 20th centuries.[11]

The Czech administrative science does not include all the employees of the state into the category of public servants. Judges, state attorneys, though the latter are incorporated in the constitutional regulation of the government as an executive power, or notaries and executors,

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[6] Pražák, A. *Rakouské právo veřejné. Díl druhy: Správní právo*. (Austrian public law. Vol. second: Administrative law. Praha. Jednota právnická 1905, p. 1. Document available online: https://digi.law.muni.cz/handle/digilaw/6878. Accessed 30. 04.2020

[7] Hendrych, D. *Správní věda. Teorie veřejné správy*. *(Administrative science and theory)*. 2nd edition Wolters Kluwer ČR, Praha 2007, pp. 11-13.

[8]"Weyr, F.: *Československé správo správní. Část obecná*. (*Czechoslovak administrative law. General Part*). Spolek Právník, Brno 1922. p. 45.

[9] Hoetzel, J. *Československé správní právo*. (*Czechoslovak administrative law).* Melantrich. Praha, 1938, p. 124.

[10] Kopecký, M. *Správní právo. Obecná část*. (*Administrative law. General Part*). C. H. Beck, Praha, 2019, p. 126. Kindl, M. et all. *Základy správního* práva. (*Basics of Administrative Law).* Aleš Čeněk. Plzeň, 2006. p. 285.

[11] Hendrych, D. et al.: *Správní právo. Obecná část. (Administrative Law. General Part*), 6th Editon, C. H. Beck, Praha, 2006. p. 459.

appointed by the state and vested with some powers of state officers, are not considered being the public servants or officers.

### 3. Public service in the legal framework

The notion of public service and a public officer still has not been defined by the legal regulation itself. It does not matter so much whether it is a legal relationship established by a particular legal act or by the regulation of the general labour legislation, see bellow at part III. The Czech administrative science anchors the affiliation to the public service in specific elements inherent to the public service and the demands of public administration. A certain level of education, an exam of the public officer, professionalism, impartiality, disciplinary responsibility for the decisions and behaviour belong to the specific features, which characterise the public service as a unique type of employment. In armed corps or high positions within the state public administration, the ban of political activity emphasises and strengthens the demand for the impartiality. The European Court of Human Rights in 1999 emphasised that *"all public servants and, especially members of the police are subject under their duties to the executive of impartiality and loyalty."*[12]

The legal regulation of the Czech Republic service is anchored in the Article 79, par. 2 of the Constitution of the Czech Republic, which stipulates for the legal regulation of state employment and other administrative offices.[13] Article 44 of the Charter of Fundamental Rights (Charter) stipulates for the practice mentioned above on various legal restrictions imposed on public servants. Based on this general provision of the Charter the right of petition, peaceful public assembly and strike are limited or entirely prohibited by judges, prosecutors and armed corps (Article 27, par. 4 of the Charter).[14]

In 1914 the Austrian-Hungarian monarchy adopted the first legal regulation of public service (Act. No.15/2014). This Act, called Service pragmatics, stipulated conditions of admittance, required education, career advancement and remuneration. This Act implemented the career system of recruitment of public servants, where the preparatory period and the professional exam were compulsory. The tenure and state pension constituted the main advantages. The new Czechoslovak Republic took this law over.[15] The Service pragmatics was valid till 1950 when the Czechoslovak Republic adopted the first Act about labour and remuneration conditions of state employees. Since 1965, with the exclusion of army corps servants, judges and state prosecutors, the Labour Code, No. 65/1965 Coll., regulated the public service.

After 1993 the service relationship was still governed by special laws for the army and judicial service and the Labour Code. The preparatory works for the EU accession needed the re-codification and modernisation of the public service. Based on the general pattern of the European Charter of Local Self-Government, ratified by the Czech Republic in 1998, and Recommendations of the Committee of Ministers on conduct of public officials and police ethics,[16] the modern employment relationships in the public service of the Czech Republic, as outlined in the following legal rules, has been constituted:

- Act No. 312/2002 Coll., on Officials of Territorial Self-Governing units
- Act No. 361/2003 Coll., on Service of Members of the Security Forces
- Act No. 221/1999 Coll., on Professional Soldiers
- Act No. 234/2014 Coll., on Civil Service.

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[12] Rekvényi v. Hungary. Application no 25390/94. Document available online: https://hudoc.echr.coe.int, accessed 30.04.2020.

[13] Document available online: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Ustava, accessed 30.04.2020.

[14] Charter of Fundamental Rights, Constitutional Act No. 2/1993 Coll. Document available online: https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Listina_English_version.pdf, accessed 30.04.2020.

[15] Schelle. K. *Vývoj veřejné správy v letech 1848-1990. (Development of Public service in 1848-1990).* 2nd Edition. Eurolex Bohemia. Praha 2005, p. 430.

[16] Recommendation No. R (2000)10 of the Committe of Ministers Member states on Codes of Conduct for Public Officials. Recommendation Rec(2001)10 of the Committee of Ministers to Member states on the European Code of Police Ethics. Documents available online: https://rm.coe.int/16806cc1ec, https://rm.coe.int/16805e297e, accessed 30.04.2020.

The last Act on Civil Service was adopted after the previous legal regulation of state service by Act No. 2018/2002 Coll., which never became valid. The tardy discussion about the legal regulation of the state civil service led to the adoption of specific obligations of public servants in the new Labour Code, Act No. 262/2006 Coll. The regulation remains still valid for specific groups of state employees, like for example the academic and non-academic staff of state universities.

The Labour Code also regulates some types of responsibility in relationship employee-employer and responsibility for the damage sustained or caused by a public officer.

The new regulation of the service relationship brought disciplinary responsibility of the public officers for the performance of the delegated office. The specifics of disciplinary responsibility are based on the fact that such responsibility represents a legal responsibility executed by relevant disciplinary authorities of the respective public administration organisations or institutions, and that it is applied, in particular, to their conditions and needs. Their main objective is to secure the proper and uninterrupted function of such an organisation in a way to protect their dignity and confidence, as seen by the public. Thus, it also contributes to the fulfilment of their tasks and objectives. This institute was assigned to such institutions because of the fact that they could fulfil their task operatively and they would not have to request other public administration institutions to remove such obstacles and agree on remedial actions. Therefore, in general, the disciplinary responsibility is often defined as a liability related to the breach of inter-organisational relationships, reaching legal form if related to organisational relationships regulated by law or as a liability for actions (or negligence) adversely affecting discipline, i.e. discipline or order within a certain social organism or social institution.[17]

The current public service is based on the merits system, except for army corps, where the career system, also requiring the Czech citizenship, prevails. The preparatory period helps to prepare the public office for the professional exam. The tenure and the impossibility of release otherwise than on request, by the agreement or due to the disciplinary offence, enable to hire educated and well-motivated public servants.

### 4. A look into current issues and their possible solutions

The run-over and the transition to the new type of public service in the digital, globalised society have started at the beginning of the 21st century. The communities were included in the planning of public services.

The digitisation of public administration helped to bring services near users. However, improvements have often stayed halfway. The public officer remained the primary contact person, and the public service has been delivered face-to-face, even in cases, where the digital means of communication could have been used.

The adoption of Act no. 12/2020 Coll., on Digital Services is a typical example. This Act enables the remote access to public services and administration, provided the user has the electronic ID card. The activation of the ID card requires personal contact with the public authority, and the user has to buy specialised hardware with the chip reader. The authorised electronic signature, accepted by the public administration, is a paid software, which must be renewed every year. The public administration does not have the hardware enabling the use of the dynamic biometric signature. Moreover, the dynamic biometric signature, recognised in many business branches as a valid type of signature for contracts, is contested by the Czech Office for Personel Data Protection[18].

The public service and the user were not forced to adapt to the worldwide digitisation of the service, despite the effort of the EU to create a Digital Single Market with all its benefits: "*Effective eGovernment can provide a wide variety of benefits including more efficiency and savings for*

[17] Fiala, Z., Sovova, O. *Legal Aspects of Disciplinary Responsibility in Public Service Regulations in the Czech Republic.* 4th International Conference on Economics Business Management and Social Sciences. *Book of Conference Proceedings and Abstracts*. Academia Press Center, 2019. p.10–11.Document available online: https://www.icebss.eu/sites/default/files/icebss_abstract_and_proceedings_v2.pdf, accessed 30.04.2020.

[18] Decision No. UOOU_10138/18_8: Document available online: https://www.codexisuno.cz/8Dq, accessed 30. 04. 2020.

*governments and businesses, increased transparency, and greater participation of citizens in political life*."[19]

Then the threat of the COVID-19 virus came. The demands for public administration and the abilities of public officers have wholly changed. Not only the EU, but all states worldwide faced and still face a threat, which is almost unknown and completely unexplored, having no such experience before.

In the Czech Republic, public authorities, municipalities and specialised public offices were closed, and technical means formed the only possibility to communicate. First decrees on emergency status were issued according to the Constitutional Act of Security of the Czech Republic No. 110/1998 Coll., and Crisis Act, No. 240/200 Coll.[20]

The status of emergency had imposed hitherto unknown obligations, directly restricting fundamental rights and freedoms, especially the freedom of free movement and economic freedoms. The rule of law shook to the foundations, as public officers, including lawyers, did not know, how to react legally correctly in a given situation of immediate danger to the health, lives and economy.

Despite the precise regulation of the Crisis Act, which among other things enables to compensate business and other damages sustained due to the emergency status, the Ministry of Health imposed further obligations by generally binding measures issued according to the Public Health Protection Act, No. 258/2000 Coll. The measures continued to restrict fundamental human rights, like the freedom of movement or economic activities to protect public and individual health and lives.

Based on the administrative action against the Ministry of Health, the City Court at Prague cancelled four of the measures. The court stated that the Czech legal order stipulates for such extraordinary situations as the topical situation is. The court agreed that emergency status enables to restrict fundamental human rights. However, the rule of law requires that the public administration proceeds according to legal regulation, as the crisis might hit not only the health or economy but also the basics of the democratic state. It is necessary to protect not only health or economy but also the rule of law and proceed according to legal regulation. As in fact, the contested binding acts were much more the legal norm that the administrative Act, the City court annulled them. Neither the plaintiff nor the court contested the necessity of extraordinary measures, needed for the protection of the state and its inhabitants in the crisis. However, the plaintiff rejected the method of achievement of the measures. The court declared the governmental procedure and the issued measures unlawful.[21]

Inhabitants had difficulties in fulfilling prohibitions and obligations, imposed on them by the crisis legislation. Self-help groups began to form to assist people in passing the unexpected situation, including the legal aid for employees and employers, who now needed the state financial and social support, but were equipped neither vocationally nor technically to communicate remotely with the public administration.

The Constitutional Court of the Czech Republic dismissed two constitutional complaints against the above-mentioned governmental decrees on emergency status. The Constitutional Court (CC) underlined that any governmental decree is a political resolution which is not a subject to judicial review. The public shall express the opinion through electoral preferences and results.[22] CC upheld its long-term case law, also cited in the mentioned negative decisions. So, the Czech constitutional case-law consistently follows the decision-making practice of the European Court of Human Rights.[23]

It is somewhat uneasy to predict further social and economic development and precise the tasks of the public administration and the role of a public officer in the next few years. The COVID

[19] See https://ec.europa.eu/digital-single-market/en/public-services-egovernment, accessed 30.04.2020.

[20] Issued on 23the April 2020. Decrees No.193-198/2020 Coll. Documents available online: https://www.sbirka.cz/POSL4TYD/NOVE/, accessed 30.04. 2020

[21] The decision of the City Court Prague, No. 14 A 41/2020, dated 23rd April 2020. Document available online: https://justice.cz/documents/14569/0/14+A+41-2020+%28Dostál_mimořádná+opatřen%C3%AD%29_final2A/0c4f37b8-fd5f-4670-a306-0c5fedaa568b, accessed 30.4.2020.

[22] Decisions Pl. ÚS 7/20, Pl. ÚS 8/20. Documents available online: www.usoud.cz/nalus, accessed 30.4.2020.

[23] Athanassoglou and Others v. Switzerland. Application no.27644/95. Document available online: https://www.ecolex.org/details/court-decision/athanassoglou-and-others-v-switzerland-9401ef56-a5ba-4036-ad27-d2472538b689/, accessed 30.04.2020.

crisis brought new issues, as mentioned above. The economists and social scientists expect the economic crisis, so the public administration will have to comply with it. Many people, as well as business entities, will, on the one hand, depend on the help of the state and community administration. On the other hand, the need for self-support of various social groups will grow.

The role of public administration and a public officer is changing. The community becomes a core of social support, as the national states started to strive to be more independent and self-sufficient in satisfying the daily needs of their inhabitants. The legal regulation of the public administration shall adapt to these demands and approach the homes of the users and at the same time, involve them.

One possible solution could be anchored in the methodological approach of the new governance**,** a strategy which allows for an interdisciplinary approach that is vitally necessary for research and practice of the public administration due to the intersections of legislative and practical issues within both public and private sector. The methodology of new governance facilitates these investigations on both the public and private level since it is based on collaboration, experimentation, adaptation and flexibility; thus, unlike other approaches, is not coercive.

A fundamental precept of this methodology is that there is not only one direction from which to proceed, i.e. not only one-way to solve public problems. Another significant aspect of this perspective is the assumption that great methodological emphasis should be placed on exploring local conditions and idiosyncrasies since solutions are first and foremost to be found in the community in question. The interdisciplinary line of attack which is a feature of the new governance is another important factor, as this allows a full-breadth exploration of selected legal institutions along with their activities and the essential ideas, knowledge and values upon which they are based. New governance thus helps to create a basis for more effective forms of participation, is able to coordinate the management of multiple stages within processes, and finally allows for greater flexibility and the support of innovative solutions.

Methodological investigations based on the new governance are useful for **e**xploring issues of public interest, among which the provision of public administration, especially in the crisis, where health services and safety-related concerns are unquestionably a priority, as well as on the grounds that: "..*governance includes complex mechanisms, procedures and institutions and through them individuals and groups express their interests; they also negotiate about their differences and discharge their rights and duties*".[24]

The authors are fully aware that criticisms of the use of new governance methodology in the law point to the possibility with this approach of chaos and fragmentation regarding elucidations of the legislation and in its application. Despite this disadvantage, the authors would like to emphasise that this methodology enables us to move from the government to the governance and self-governance of local communities. This typical feature of the new governance method is and will be needed in the new conditions of the global economic crisis, which is expected to follow the global health crisis.[25]

The new governance method is closely connected with the Good Governance approach. This practical attitude is oriented towards finding an optimal governance system which is productive and conducive to economic prosperity and social balance, which is vital for maintaining trust. As in the new governance theories, the involvement of the private and non-governmental sector seems to be a key point as seen from Good Governance; participation of the private and non-governmental sector in management and administration strengthens legitimacy and competence of management, especially in terms of communication and feedback. Strengthening the role of a citizen (his/her participation) in this system shall be reflected in deepening/restoring confidence in public administration (government).[26]

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[24] Constantionos, C. B., *Theories of Governance and New Public Management*. Adis Ababa University. 2009 p. 3. Document available online: www.aau.edu.et, accessed 30.04.2020.

[25] Sovová, O., *Current Research Issues in Regarding Health as a Fundamental Human Right*. Charles University in Prague Faculty of Law*,"Research Paper No. 2017/III/2*." Document available online: https://ssrn.com/abstract=3046484, accessed 30.04.2020.

[26] Fiala, Z. Sovova, O., *Theory of Public Administration Management-a Retrospective View*, International Scientific Conference EMAN – Economics & Management: How to Cope with Disrupted Times, Proceedings. Belgrade, 2019. pp. 141-150. The document is available online: https://doi.org/10.31410/EMAN.2019, accessed 30.04.2020.

## 5. Conclusion

The public administration is a multidisciplinary concept, which mingles, among other things, human and citizens' rights, administrative theory and practice, the relationship between public servants, politicians and users. It encompasses, in fact, all the public sector performance, including its evaluation and control.[27] The author devoted their paper to one part of it. They examined the transition of the public administration and public service into the 21st century. The authors used the methodology of historical interpretation, explanation and description of the legal regulation and case-law for the discussion and examination.

The authors identified the main challenges for the public administration for the next future. The digitisation is the most important of them. There are needs for the improvement of users' digital literacy and easy access to the cheap and quality internet connection, not only in cities or more significant communities but all around the country. The identification of any user, accessing remotely to the public office, must be quick, precise and secure.

Further, new challenges, caused by the pandemic health threats and the possibility of a global economic crisis, need new approaches and the change in public administration and services. The public officer shall become not only an educated, impartial professional in administrative law but also a manager and a part of the learning organisation. The authors examined the legal regulation of public service in the Czech Republic, and they are persuaded that it creates a solid foundation for the solution of discussed issues and challenges.

The need for social distancing and the daily administrative work, based on digital technologies, home offices and the involvement of communities, require an entirely new approach to the daily duties and their execution not just on the side of the public administration, but on the side of users, too. As stated above, the new governance methodology will enable the full transition and execution of new tasks to the rule of law, even in critical situations.

At the current crisis, the public administration and service should be a certainty in uncertain times.

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