



NISPA

THE NETWORK OF INSTITUTES AND
SCHOOLS OF PUBLIC ADMINISTRATION
IN CENTRAL AND EASTERN EUROPE

Administrative Law

EDITED BY GLEN WRIGHT

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The Network of Institutes and Schools of Public Administration in
Central and Eastern Europe

ADMINISTRATIVE LAW

Proceedings from the fourth summer workshop held in Budapest,
Hungary

September 1-5, 1997

Edited by:

Glen Wright

School of Public Administration, Hungary

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ADMINISTRATIVE LAW

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AN OVERVIEW OF ADMINISTRATIVE LAW IN THE TRANSITION COUNTRIES

*Glen Wright**

Introduction

The NISPAcee Summer Workshop held in Budapest during the week of September 1-5, 1997 focused on the field of administrative law. This workshop, as with all previous workshops, brought together a panel of experts with a group of highly motivated and engaged participants to bring new insights, learning, experiences and energy to further define and explore the complex topic of administrative law.

The professional, as well as geographical, balance represented in the workshop contributed immensely to the learning environment. From law to economics to public administration; the academic background of the participants brought a broad range of perspectives to the workshop discussions. For many of the participants, administrative law is an "old" subject that has survived from pre-World War II, through the communist era, and now has a new life as it is now a central focus of study in the new field of public administration in the transition countries. Administrative law as an element of basic legal education has taken on new importance as the need for professionally trained and competent merit based civil servants is developing throughout the region.

For those who are directly involved in establishing the field of public administration separate from a legal based field of study, the need to understand and train future civil servants in administrative law is a necessity and challenge to be faced. For many of the participants, administrative law is a "new" subject to be learned, mastered and taught in these new institutions.

In this brief introduction I intend to only highlight some of that learning and direct the reader's attention to some of the papers presented in this volume. The presentations by the participants and discussions that followed cannot, unfortunately, be reproduced here. But as you read through the papers and visualize the presentations and discussions you can readily determine that the workshop was filled with intellectual stimulation,

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provocative discussions and a great amount of knowledge and experience sharing among all those attending. In short, it was the great success that all those who attend NISPAcee Workshops have come to expect and appreciate. It is hoped that the publication of this volume of papers from the workshop will continue the success of the workshop to those who could not attend.

Overview of Workshop Papers

It is not necessary to provide a description of all the papers presented in this volume. These have been divided into four main sections and a few brief comments on some of the papers is only intended to highlight to the reader the importance of the paper in the particular section.

The first section of introductory papers provides an excellent overview of the main purpose of the workshop. That is to provide background to the curriculum development and teaching requirements for the study of Administrative Law. The three papers by Frederick Lachmeyer, Denis Galligan and Wolfgang Weigel provide this background.

Professor Lachmeyer provides us with an overview of the legal knowledge required by civil servants in the performance of their duties. He identifies the various levels of organization, as well as legal structures, which compose the knowledge areas civil servants must comprehend in their training and actual functions. Professor Lachmeyer makes an important point in his paper by stating "The persistent change of administrative law has led to the necessity for civil servants to undergo permanent training."

The papers by Professors Galligan and Weigel provide the comparison of methodology approaches to the field of administrative law. Professor Galligan's paper comes from the legal and sociological perspective of what is required for the public administrator; while Professor Weigel's paper reveals a new approach based on economic analysis of administrative decisions. Both papers provide a necessary and important viewpoint for those dealing with the training of public administration.

The second paper by Professor Galligan breaks new ground in the research and study of administrative law in the Central European transition. The discussion of the results of this research project on a comparative basis and development of case studies is a landmark effort, in my opinion, on how research methods can be employed to advance knowledge in this field. The forthcoming volume titled "Administrative Justice in Selective Countries of Central and Eastern Europe, edited by Professor Galligan, C. Nicandrou and R. Langan is eagerly awaited and highly recommended.

The second section on Training Development in Administrative Law provides an important paper by Mik Strmecki from the School of Public Administration, University of Ljubljana, Slovenia. This is a very detailed assessment for the development of a training program for senior civil servants to further Slovenia's entry to the European Union. This is a very important effort that other countries of the region should take note of and replicate. Successful models should be imitated and this is one training model worth imitation.

The third section presents a wide variety of course and curriculum descriptions for your review. Perhaps this section represents the most important aspect of our effort. The main purpose of the workshop was to expand the knowledge of those actively involved in teaching administrative law. For those needing a solid base for developing their courses in administrative law; this section provides that knowledge for your use. Please help yourself to the rich contents of this section.

In the final section a few case situations in administrative law are presented. These illustrate the complex legal environment that faces public administrators in the transition countries. The conflicting laws and legal interpretations are equally matched by confusing circumstances of actual events. These cases illustrate some of these problems.

The case of The Dismissal of the Insurance Institute (INSIG) Director from Albania illustrates the complex, confusing and difficult situations that confront those applying administrative law to actual situations. You are encouraged to apply your own legal analysis to this case. The paper by Bernhard Scholer will help you in developing your legal reasoning.

The last two short essays in this section end our volume on a lighter note. What could be more simple than naming a child? These articles demonstrate how complicated this can become.

In this short introduction I have only sought to whet your appetite for the remainder of this book. In think you can see that much learning awaits you as you continue your reading.

Status of Administrative Law in the Transition Countries

The 17 participants from the eleven countries provided an opportunity to measure some features of the status of administrative law in these countries. Accordingly, during the workshop a number of questions were proposed and country specific responses were obtained. A brief summary of some of the questions yields some interesting aspects of the status of administrative law.

A survey of the status of constitutions revealed that, generally, most countries have thrown out their constitutions from the communist era and adopted new ones. However, there are some interesting exceptions to this as identified in the following table.

Table 1
Adoption of Constitutions

Albania	No new constitution
Czech Republic	1992
Estonia	1992
Hungary	Amended from Communist era
Kazakstan	1995
Kyrgyz Republic	1993
Latvia	Returned to Constitution of 1922
Poland	1997
Ukraine	1996
Yugoslavia	1992

Latvia represents an interesting situation in that it revived the constitution from the pre-soviet domination era. Albania still does not have a new constitution; while Hungary has amended the existing constitution from the communist era.

The status of an administrative procedures law was an additional question posed to participants with results provided in Table 2.

Table 2
Status of Administrative Procedures Law

Albania	Law in effect from communist era
Czech Republic	Law in effect from pre-communist era, but changed in 1977
Estonia	No administrative procedures law
Hungary	Law in effect from pre-communist era, but changed to Present date
Kazakstan	No administrative procedures law
Latvia	Adopted in 1995
Poland	Adopted in 1960's
Slovenia	Adopted from 1928
Ukraine	No administrative procedures law

Yugoslavia Adopted from 1928

The countries represented above tend to fall into three categories. These are (1) those with roots pre-World War II for the development of administrative law, (2) those with historical roots from the communist era, and (3) those without any administrative procedure law in effect today or only recently adopted. This division underscores the challenge in developing the study and teaching of administrative law in the transition countries as the need to take into account the diverse backgrounds for the development of administrative law.

Table 3 presents the responses to the question of what are the main sources of influence for administrative procedures law in each of the countries represented. This also highlights the differences in terms of how administrative law will develop in each of the countries in the coming years.

Table 3
Main Sources of Influence on Administrative Law

Albania	Soviet and German
Czech Republic	German-Austrian-Soviet
Estonia	German
Kazakstan	Soviet-German-French
Kyrghyz Republic	Soviet
Latvia	German-Netherlands-Portuguese
Poland	German-French
Slovenia	Austrian-German
Ukraine	French-U.S.-German-Japanese
Yugoslavia	Austrian-German

The influence of the German approach to administrative law is readily apparent. We, however, are unable to fully measure to what extent this influence is exerted other than to note how widely recognized this influence is throughout the region.

The importance of judicial review as a restraint on administrative decisions is an important feature of democratic systems. A further question asked of the participants was the status of judicial review in their countries. The following table summarizes the responses to this question.

Table 4
Adoption of Judicial Review of Administrative Decisions

Albania	No Judicial Review
Czech Republic	Long established tradition from previous century
Estonia	Judicial Review established from 1980's
Kazakstan	Judicial Review established from 1968
Poland	Existed pre-WW II, New law in 1980 on judicial review, Administrative court created in 1995
Slovenia	Judicial Review from 1929, 1945-53 stopped, revived 1953 to present
Ukraine	No Administrative courts to exercise judicial review
Yugoslavia	Same as for Slovenia

From the above it seems that the judicial review of administrative decisions is well established on a historical basis for most of the countries of the region.

As a final question participants were asked to evaluate the degree of constraint of several features that control the administrative decision process. The results of this question are presented in Table 5. Some interesting results are demonstrated in the responses. None of these constraints represent a high level of control over administrative decisions.

Table 5
Constraints on Administrative Decisions

	Administrative Procedures	Professional Values	Laws on Corruption	Organizational Actions/Audit	Parliamentary Oversight	Ombudsmen	Media Press	Citizen Actions	Independent Judiciary
Albania	L	L	M	M	M	L	M	NE	M
Czech Republic	H	M	M	L	M	NE	M	M	M
Estonia	L	L	M	M	L	NE	M	L	M
Kazakhstan	M	M	L	M	H	NE	H	L	M
Kyrgyz Republic	M	L	L	L	M	NE	M	L	L
Latvia	M	M	M	M	M	M	M	L	M
Poland	H	M	M	L	M	H	H	L	H
Slovenia	M	M	M	L	L	H	H	L	M
Ukraine	L	M	NE	L	M	NE	M	L	L
Yugoslavia	M	M	NE	L	L	NE	L	L	L

H = High Level of Constraint

M = Medium Level of Constraint

L = Low Level of Constraint

NE = Non Existent

Organizational actions, such as audits, represent a low level of influence. The Ombudsman represents an interesting situation. It is non-existent in most countries, but where established, such as Poland and Slovenia, it exercises a high level of constraint on administrative decisions. Citizen actions are rated low as a means to constrain the administrative process by practically all respondents. An independent judiciary demonstrates some potential as a medium to high level of constraint. Overall, the results reveal a myriad of different situations in changing the bureaucratic power from the communist era and establishing democratic safeguards to administrative actions.

Conclusion

The above represents only a portion of the interesting and informative knowledge exchanged at the Administrative Law Workshop. The importance of administrative law is readily apparent as part of the training of public servants in these countries. The consensus of all participants was that there is a need to continue to develop the study and practice of administrative law in the institutions represented by NISPAcee.

It is hoped that this volume will be interesting and informative for those who have an academic and practical interest in administrative law. In that respect this volume represents the beginning of a new focus on an "old" subject.

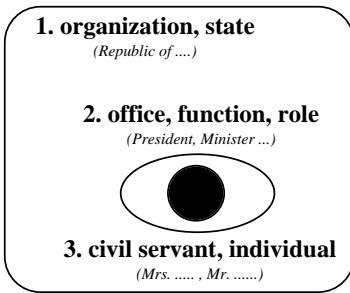
The participants extend their appreciation to the sponsors and supporters of this workshop. Special thanks are extended to the NISPAcee Steering Committee and Secretariat for their support.

Section 1
Introductory Papers

1.1 THE LEGAL KNOWLEDGE OF CIVIL SERVANTS

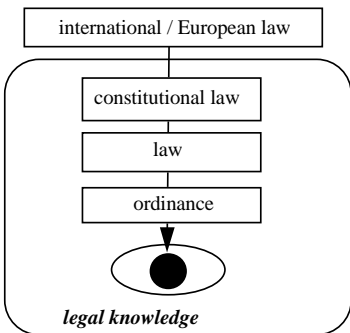
*Friedrich Lachmayer**

In principle, one has to distinguish three different levels: the first one is the organizational level. This is the level of states, such as the Republic of Austria. The second level is that of an office, function, or an official role. It comprises, for instance, the office of a president, a minister. Eventually, there is the third level, i.e. the personal level of the civil servant, his individual existence. Therefore, it is Mr.XX or Mrs.YY who exercises a specific function.



The legal knowledge of an institution consists, for instance, in a library or a database. Mostly, such institutional legal knowledge is very comprehensive but not imparted on a person-to-person basis. It must be distinguished from the personal legal knowledge of the individual civil servant which can be intensified through training. This also includes the methodical training in the use of libraries and data bases.

Legal knowledge can refer to various levels of law. As far as domestic law is concerned, it is primarily constitutional law, statutory law and ordinances which are important. Another important factor, however, is the knowledge of international law, such as European law.



What is highly significant in practical terms is the constitutional principle according to which the entire public administration must be based on law.

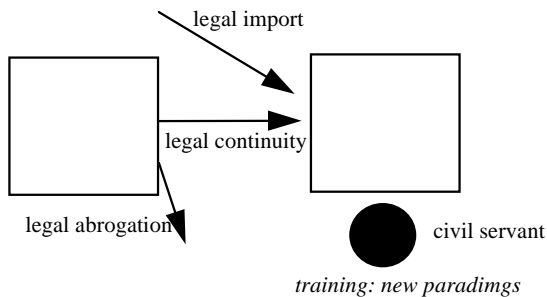
The persistent change of administrative law has led to the necessity for civil servants to undergo permanent training. This, however, entails the risk of too many amendments. In such case, training is often not sufficient to internalize the rapidly

* The Austrian Federal Chancellery, Vienna, Austria

changing amendments. Frequently, the lawmakers also forget that the text of laws can be modified quickly but that the addressees' awareness of their legal roles cannot be changed in the same way. The "regulation – role – dilemma" consists in the fact that roles are invariably more stable than legal texts.

Not only the quantity of amendments may pose a problem but also their quality. We observe a tendency toward symbolic legislation. This type of legislation is aimed less at direct realization but rather at sending a signal. In administrative law training, this specific importance of symbolic legislation is frequently neglected. What therefore develops is a kind of taboo, i.e. that symbolic legislation exists but is not recognized as such.

Our time is characterized by a fundamental change in the overall legal context. The change of law, however, does not always follow the principle of legal continuity. There is also an import of new regulations just as regulations having applied so far cease to be effective. In order to come to a modern type of administration, it is necessary to train the new paradigms.



In most cases, the level of the civil servants' personal legal knowledge is limited. What the majority knows is the administrative law that concerns them directly. Less frequent is the precise knowledge of constitutional law, especially in cases where constitutional law is modified fundamentally. Still less frequent is the knowledge of international and supranational law.

Therefore, it must be one of the training objectives to intensify particularly the legal knowledge of constitutional law and international and supranational law.

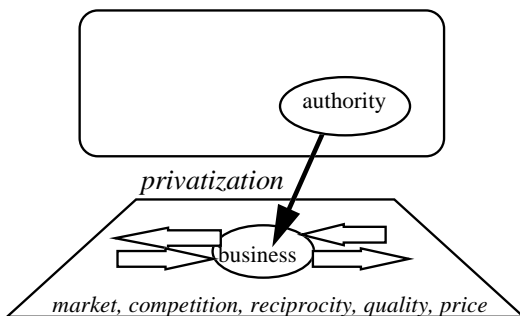
However, legal knowledge is only one aspect of training. It is equally important to enhance the practically relevant legal knowledge of civil

servants, i.e. to focus not merely on law literacy but also on legally relevant facts and situations.

Administrative procedure is of prime importance for shaping administrative law in practical terms. Administrative procedure is something like a dialogue between the administrative authorities and the persons, i.e. the parties to administrative proceedings. An administrative authority is expected to have a perfect knowledge of the rules of administrative procedure and to be able to apply these rules in accordance with the principle that the entire public administration must be based on law (“principle of legality”).

There are indications that this tendency will change fundamentally in so far as tasks of the public sector are being increasingly outsourced to the private sector. Thus, the public authority is partially replaced by the private company. This process is known as privatization.

Privatization, however, causes new criteria to be applied, such as the market, competition, pay for service, quality and price. So far, the public authorities, with their vertical and hierarchical structure, have not taken these criteria into account appropriately.

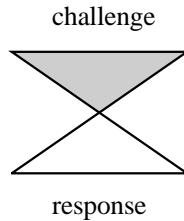


In addition, privatization creates new legal conditions. The law of hierarchical authorities is different from the law applicable to the companies that are now dealing with privatized administrative tasks.

These new legal conditions must be explained both to the civil servants and the employees of the private companies that are now in charge of traditionally public tasks.

From the methodical point of view, reference needs to be made to the dialectics of challenge and response. A given situation is taken as thesis to

which the challenge is added as antithesis. The solution of the problem is then something like the synthesis linking, and at the same time reconciling, the existing situation with the new challenge.



In connection with the legal knowledge of civil servants, it is appropriate to mention also the different stages of the evolution of the law reflected in the development of the public administration. Initially, the evolution of the law was characterized by customary law. Legal knowledge was transmitted by oral traditions.

The second stage of the evolution of the law, which is still prevailing today, is characterized by legal texts. It is the monopoly of creating and interpreting such legal texts that makes up the power of the legal profession.

However, there are indications of a forthcoming third stage in the evolution of the law, i.e. machine-law. The task of the law is predominantly that of distribution. In future, this task of distribution will increasingly be carried out by machines.

Knowledge is important. But it is also a permanent task. Thus, the acquisition of legal knowledge is also a permanent task confronting the public administration at any time.

1.2 TEACHING ADMINISTRATIVE LAW TO PUBLIC ADMINISTRATORS

*Denis J. Galligan**

1. Introduction

In teaching public administrators about administrative law, we need to adopt the point of view of the public administrator. The question is then to be asked, what does a public administrator need from the law; or in other words, in what ways does the law feature in the daily work of an administrative official. Adopting the perspective of the administrative official, the question then is what is that person's view of the law. What problems does the law pose for the daily work of the public official? But it is not only the point of view of the public official that is important; it is equally important to take account of society's objectives in relation to both the law and public administration. Accordingly, in this discussion I shall discuss the teaching of public law to public administrators from this perspective.

2. Society's objectives; law and public administration

From the point of view of general society, public administration is directed at achieving three primary objectives: good quality administration, respect for the rights of citizens, and a general sense of legitimate government. Each of these will be considered briefly in turn.

- (i) *Good quality administration* This refers to the accurate and proper application of the law to different factual situations and to a realisation of legislative goals. Good quality administration should not only satisfy the objectives for which the power has been conferred, but it should do so in a way which is efficient and effective. Efficiency here suggests that those goals are achieved in an economical way. Effectiveness means that the goals are realised to a high level.
- (ii) *Respect for the rights of citizens* Public administration is concerned not only with good quality administration in the sense above. Good quality administration also includes compliance with general principles concerning the way individuals and groups are treated by the administration. The first such general principle is that the law ought to

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be applied properly and accurately to each person's case. The second set of principles is of a more general and wide-ranging kind. It includes principles such as fair treatment, reasoned and rational decision-making, the disclosure of evidence and other information; the participation and involvement of the citizen in the administrative process. Administrative law is very much concerned with both the statement of such general principles and their implementation in the day to day activities of the administration.

- (iii) *Legitimate Government* In addition to the first two objectives, public administration should also be concerned to foster a sense of legitimacy. Administrative law helps in achieving that end by ensuring that public administration is conducted according to certain principles. Good quality administration itself is at the centre of legitimate government. Showing respect for the rights of citizens also is a major element of legitimate government. There are, however, other aspects of legitimate government, such as openness and transparency, reasonableness in decision-making, and accountability in various forms. All these taken together add to the general sense of administrative legitimacy.

3. Law from the point of view of public administration

How then does law feature in the day to day life of the public administrator? Or to put it another way, what are the different ways in which the public administrator is confronted by law? At least three lines of inquiry can be opened here.

- (i) In the first place, administrative law defines the role of the public administrator. It does so by conferring power on the administration and then specifying how those powers of authorities are to be exercised. The powers of public authorities often have to be interpreted and a considerable amount of discretion may be required in doing so. Without legal authority, public administrators have no power.
- (ii) Administrative law also provides guidance to the public administrator by influencing and directing decision-making. It provides such guidance on the substantive issues: for example, who is to receive benefits in what circumstances, when should a license be granted to carry out the particular activity . Administrative law also provides guidance in a second sense: it lays down general principles, of the kind mentioned above, that need to be followed. These general principles include such matters as disclosing information, being open and transparent, and affording a hearing to interested parties.

- (iii) The third way in which the law affects public administration is when a challenge is mounted against an administrative act or decision. Such a challenge is usually made by an aggrieved citizen whose interests are affected and who wishes to take the matter on appeal. The appeal might be to a court or special tribunal of some kind, or it might be a complaint to an ombudsman which triggers off an investigation into the issue. Challenges of this kind naturally create additional work and anxiety for public officials; they also impose a drain on resources. It can be seen from this brief account that administrative law plays a prominent role in the day to day activities of public administrators in conferring powers, shaping the exercise of those powers, and scrutinizing them after the event through various forms of recourse.

4. Relationship between public administration and administrative law

It can be seen from the discussion so far that the relationship between public administration and public law is complex. Let me identify more particularly three aspects of that relationship.

- (i) In the first place, the law creates public administration, defines its objectives, and confers powers upon it. In this sense the law empowers and facilitates.
- (ii) In the day to day operation of public administration, however, the law may be seen by the administrators as external. To the busy administrator, there may be a whole range of rather more informal and internal norms, conventions, and practices which have grown within the organization rather than been imposed from outside. This internal, informal law often has to compete with externally imposed legal rules and doctrines. An interesting characteristic of any public organization is the tension between these internal forces and the external influence of the law. Empirical studies across many types of administration have shown just how difficult it is to translate externally imposed law to the internal workings of the administration.
- (iii) Law may well be seen as obstructive of public administration. It may be obstructive in the sense that it imposes additional burdens which would not come naturally to the particular agency or department. The law might appear to distort efficiency by imposing such burdens, and to require that things be done according to a certain procedure. To the public administrator, the law will often make no sense; it will be unclear in its language and uncertain in its purposes; and it may seem

foreign to the internal world of the administrator. Finally, the law may seem contrary to the common sense of the public administrator. As noted, public administrators develop a way of doing things, a way of viewing their tasks, a way of solving problems. These practices and approaches will have developed organically while the externally imposed law may not seem to be responsive to particular issues and problems. In that way it will often seem contrary to common sense.

5. Specific objectives of legal training for public administrators

Against this background, let us now look at the more specific objectives to be achieved in the legal training of the public administrators. These are several.

- (i) The first is to impart knowledge and understanding of the law. Law here may operate at various levels. First, there is the constitution, second, statute and parliamentary law, thirdly, general laws, such as codes of administrative procedure, fourthly, judicial decisions with particular reference to public administration, and fifthly, international norms deriving from treaties and agreements. Moreover, the law is complex, it often changes, and it is not always easily available. To impart a basic knowledge and understanding of the law to public administrators is an essential but for these reasons, often difficult task.
- (ii) The second objective in training public administrators is to translate the knowledge and understanding referred to above into the daily practice of administration. This in turn has a number of elements.

First, the public administrator must understand the scope of legal powers, how they are defined, how they operate in particular contexts, and what are their limits. The public administrator must be able to understand and interpret laws of this kind; he must be able to distinguish between formal laws and informal practices and norms; he must be able to distinguish between laws that are relevant and laws that are not.

Secondly, knowledge and understanding of the law can be translated into daily practice by understanding procedures. Procedures represent another important part of the legal environment. They include general codes of administrative procedure and specific procedures laid down for specific purposes. Moreover, public administrators need to be able to reconcile their own preferred procedures with those laid down by law. This requires training in understanding procedural codes and in being able to marshal scarce resources to satisfy procedural demands.

Thirdly, understanding the law in daily practice involves a knowledge of the legal constraints on decisions and actions in particular contexts. The public administrator has to grasp the idea that decisions should be based on good evidence, they must be reasoned and reasonable, they must be an accurate reflection of the law and, where there is discretion, it must be exercised according to relevant factors. The administration must also be familiar with general principles, such as the principle of proportionality, the need to act fairly towards persons affected, and the need to disclose reasons for decisions.

Fourthly, the administrator's general knowledge and understanding can be translated into legal practice by being instructed in the matters that need to be disclosed to interested parties. The administrator needs to know whether there is a general freedom of information act which imposes duties of disclosure, or alternatively a code of administrative procedure which imposes similar duties. In the absence of such general provisions, there may be particular laws requiring disclosure. Disclosure usually refers to factual evidence and materials held by the administrator relevant to a particular issue. The administrator must also realize that reasons have to be given and that they must be of a certain kind.

- (iii) The third specific objective in training public administrators is to instruct them in the various forms of supervision and oversight to which their actions may be subject. The issue often arises as to when a decision or act can be challenged by an aggrieved party. In order to answer that question, the public administrator needs to be familiar with internal appeal procedures, with the scope of jurisdiction of ombudsmen, with the nature and extent of judicial supervision, with the powers of special inspectors and courts, such as audit commissions, and with other, more informal forms of supervisions.

The forms of supervision are numerous and diverse in their objectives. Several issues arise for public administrators. First, how to avoid scrutiny. This raises the question of what preventative measures can be taken by administrators to avoid the need to defend a case before a court or in the face of an ombudsman's investigation. This in turn requires a good knowledge of the different forms of supervision and the exact powers and scope of each. Secondly, the public administrator needs to know how to deal with supervision and scrutiny when it occurs. What is expected of the administrator, how best to handle the investigation or litigation, and how to accommodate these disruptions

within an organised programme of work. Thirdly, where there is outside supervision, the issue arises as to how the results can be incorporated into the practical working of the authority for the future. A change in procedures may be necessary; a different approach to certain particular issues may be desirable. There is also the question of communication within an agency or department as to the results of a form of scrutiny, so that others can benefit from the guidance given.

6. Conclusion

The teaching of law to public administrators has generally not been considered a matter of great importance. The public administration develops its own way of doing things, and can draw on a whole range of knowledge and expertise as to how to conduct a department or agency efficiently and effectively. The role of the law in that enterprise has often been neglected. However, it is becoming increasingly clear that the law plays a major role in public administration. This is particularly the case in those societies of Central and Eastern Europe which have recently emerged from a totalitarian, one party system, to democracies based on liberal ideas. In this short presentation, I have given an outline of some of the ways in which the law inter-relates with public administration. Emphasis has been placed on the need to see this issue from the point of view of the public administrator, and to stress the general concern that the law should be integrated and internalized, rather than external and obstructive.

1.3 ECONOMIC ANALYSIS OF LAW

*Wolfgang Weigel**

1. Definition and basic ideas:

Where the goals and effects of law are looked at from an economic perspective, the emerging interdisciplinary approach is termed “Law and Economics”. In emphasizing the methodology one may alternatively use the label “Economic Analysis of Law”.

The Economic Analysis of Law (L&E to abbreviate) aims at determining the intended and unintended effects of laws by standards of economic efficiency. Frequently it takes an even broader perspective by focusing on social welfare, either through maximization of the former or through minimization of social costs. Consequently, L&E is also applied to redesign legal remedies in order to accomplish the intended goals. Moreover, it is asked to accomplish its analysis in as much that courts are asked to accomplish efficiency when the law in operation fails to do so.

Thus L&E deviates radically from more traditional views of the law: It does not focus on the consistency, or inconsistency, of legal remedies within the legal system and it does not deal with questions such as whether an act is unlawful or valuable in and of itself.

In order to accomplish the tasks of L&E, a theory of human behaviour is needed, which allows to derive propositions about the most likely courses of action under various conditions. Only then can the effects of the law on human conduct can be studied. The most widely used theory in that respect is borrowed from neo-classical economics, utility theory. Since L&E does not only deal with single individuals but also with the conditions of law-making, several areas of economic research come into play. They may conveniently be summarised under the label of the economics of non-market decision making or “public choice”. These assertions serve as background for the following two postulates:

First, individuals are assumed to behave rationally. More specifically, it is postulated that people are utility-maximizers (“homo economicus”). However, this assumption is challenged quite frequently nowadays and there have been attempts to replace it by the weaker assumption of “bounded rationality”.

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Second, the appropriate entity in society is the individual (“methodological individualism”). This postulate contains two views, one descriptive and one prescriptive in nature. When looking at economic and legal systems, the state or society, it is not the performance and change of these entities which is at stake, but the behaviour of individuals which guides these entities. Consequently, all social actions, including law making, must be traced back to the preferences and goals of individuals.

Critics have frequently claimed that L&E neglects issues of equity and justice. Although this is true for most of the early work emerging from the Chicago school, there is increasing concern about incorporating equity into the analysis nowadays. To some extent, the degree to which this is done, is one of the distinctive features of several schools of thought within L&E.

2. A broader perspective: New institutional economics:

L&E must not be considered as an isolated subject. It is part of an all-encompassing paradigm, which claims to take a fresh look at issues, which the so-called neo-classical approach to economics had almost entirely neglected: Institutional economics. As an underpinning of the institutionalist view of the economy, I would like to quote George Stigler here. In his Presidential address on the occasion of the 1964 meeting of the American Economic Association he stated: The competence of economists ... “consists in understanding how an economic system works under alternative institutional frameworks”, and, one is tempted to say consequently: “The basic role of the scientist in public policy, therefore, is that of establishing the costs and benefits of alternative institutional arrangements”.

Although it is not an easy task to give a definition of such a broad term as “institution”, it ought to be outlined at least. *An Institution is a system of formal or informal rules, which by consent guides actions in a particular way and contains remedies for enforcement.*

But what is (new) institutionalism about?

Economics traditionally deals with decisions over scarce resources. Thus, the constraints caused by scarcity are at the core of economic research. But there is a second set of constraints which deserves attention: these are norms of all kinds, which govern human behavior in society. Such norms can take the form of laws, but they also comprise informal rules, customs and traditions. They can be the result of explicit collective decision making, but they may also emerge tacitly. They are subject to change or they may be violated. The by now well established New

Institutional Economics concentrates on the analysis of the emergence and change of such norms, their effect on human conduct as well as conditions for and consequences of violation. The work on L&E may be comprised as a subset of that broader approach.

Institutional economics has dealt with such issues as the rational reconstruction of a constitution by unanimous vote, with remedies against welfare losses from incomplete contracts, with the governance structure of large corporations, liability rules and insurance, and with the peculiar economics of bureaucracy, to name just a few fields of research.

As L&E adopts the methodology of the institutional approach, a quick review of the ingredients is appropriate.

3. The Toolbox of L&E:

What Institutionalists in general and scholars of L&E need to do first is to explain why there are all sorts of rules. Stated differently, the first question to be answered is, what causes rational, selfish individuals to submit themselves to common rules and what causes them to comply. In order to accomplish this task it is not very fruitful to look at (quantities of) commodities or goods, as the orthodoxy of economics (and law) does. Instead the concept of property rights is developed.

Property rights are sanctioned relations among people pertaining to the use of goods. To illustrate, the property rights associated with an apple tree could be to enjoy its sight, to consume its fruits, to sell or to cut it down. The property right of a tape recorder may include listening to hard-rock music - but not after ten o'clock p.m., since people in the neighbourhood might be disturbed. The latter effect creates an *externality*. While one derives utility from using the tape recorder, someone else, who likes to sleep is adversely affected by the music, without receiving compensation (damages). There may be two reasons for this. Either the property rights associated with the ownership of the tape recorder are not clearly specified (there are no agreed upon restrictions pertaining to its use) or they are ignored by the owner. Negative externalities exist between consumers and consumers, producers and producers (sparks from a steam engine set crops on fire) as well as producers and consumers and even consumers and producers (if you dump your waste in a fisherman's pond). Externalities cause inefficiency. To illustrate: If you do not pay damages for the nuisance you create you are actually enjoying lower costs of your activities than you ought to and, hence, your activities are performed on a level above the

economically appropriate one, which is that level, at which all costs are covered. A standing order then could read: Do not play your tape recorder loudly after 10 p.m. or you face the payment of damages, where damages are scheduled so as to create an incentive to observe the restriction on the property right. That is to say the probability of being detected is included in the schedule (for details see below).

Unfortunately, it is not always clear who has caused an externality. It may be very costly in terms of time and other costs to find out in order to claim (or even sue for) compensation. These kinds of problems, along with the efforts one might have to undertake to verify causation, are termed *transaction costs*. Note what can happen when transaction costs are absent in the case of the noisy neighbor. You could immediately start negotiations about conditions for turning the tape recorder volume lower. And there is a good chance of reaching an agreement. If and only if such an agreement is not reached, you have two options: to suffer, that is to say, to bear the cost of another persons wrongdoing, or to turn to a court provided that it has been established. But the court is a legal institution, and its purpose is to assist you when the transaction costs prohibit negotiations with your noisy neighbor. To be sure L&E is a little more sophisticated than my example suggests, but my intention here is only to give you a first idea of the kind of toolbox we are using.

Besides externalities, transactions costs are associated with another kind of problem stemming from poorly specified property rights: *incomplete contracts*. To illustrate: You have bought a cupboard, but in the contract, both sides forgot (intentionally or unintentionally) to specify, who has to arrange delivery (a cupboard normally cannot be carried away and taken on a public bus). Trouble starts since you have to bargain with the supplier which creates a transaction cost to you. Standard buyer contracts are a useful remedy to prevent such bad and costly experience. In fact, the theory of incomplete contracts along with the theory of externalities are at the core of L&E. Since ultimately the use of L&E for administrative law ought to be illustrated, I would like to stress the fundamental importance of the tools just explained for the vast area of regulation!

There are some economic devices for the assessment of economic solutions pertaining to the uses of property rights: These are:

Efficiency, Pareto optimality and Pareto improvements, respectively, and the compensation test.

Efficiency requires a given goal to be achieved at minimum cost. Perfect markets are said to secure efficiency. Therefore, many theorists of L&E argue that whatever legal arrangement are sought, it should simulate the market outcome. That holds for justice-made law also.

Moreover, allocations of property rights are assessed by the concept of Pareto-optimality: A situation is Pareto-optimal when there is no possibility left to improve the situation of one individual without harming another one. Unfortunately, Pareto-optimality can be ambiguous. If 100 soft drinks are distributed among 10 people who had no drinks before, then giving 10 drinks to each member of the group improves the situation for each of them. But so does giving 15 drinks to 5 people and 5 drinks each to the rest. Obviously standards of equity or justice ought to be considered separately. However, we may say that the allocation is *fair*, when even in the case of the unequal distribution no member of the group is envious, that is to say: she would prefer to have another person's endowment instead of her own.

According to the concept of Pareto-optimality, a change in a situation should contain a Pareto-improvement. The increase in well-being of people should not take place at the cost of even one individual. Clearly, such strict requirements are rarely accomplished. Therefore, the *compensation-test* was invented (sometimes quoted as the KALDOR-HICKS criterion). The underlying idea is that mostly there are gainers and losers, but that the gains must be so high that losers could be offered a compensation which is so high that they remain on their initial level of welfare and still gainers will win. If that is possible, the requirement of a Pareto-improvement could be saved.

Before turning to the use of L&E in public administration, its features should be emphasized by presenting some of the more fundamental hypotheses and propositions:

4. Some results:

The COASE theorem.

According to this fundamental theorem, the absence of transaction costs will always lead to an optimal allocation of resources irrespective of the legal regime. To illustrate: Consider a typical situation with a negative externality. A railway company runs an enthusiasts excursion train with a steam engine. From the sparks from the train the crop of a farmer, whose land is situated along the line, is set on fire. Now, two regimes can apply.

Firstly, the company is entitled to operate steam-engines without any precautions; and secondly, the farmer is entitled to an undamaged harvest. In the first situation the company is not liable, but the farmer can start negotiations with the railway company in order to make them select another route, or not to operate the train in the section alongside his land. In order to accomplish that task he can offer compensation for the profits of the company foregone up to the additional losses he suffered in the original situation (which would leave him in the same situation, when the damage occurred). Otherwise he has to bear the damage due to prevailing entitlements (property rights). Since the railway company gets compensation for additional profits forgone by not carrying out the full programme, agreement could be reached.

In the second situation the farmer is entitled to receive damages and the railway company must offer compensation to the farmer; the maximum compensation they can offer is that of the additional profits forgone. Consequently, an optimum can be reached by direct negotiations irrespective of the original legal regime!

The COASE theorem serves as a benchmark for all kinds of problems in the field of L&E, just as the general equilibrium model serves as a benchmark in orthodox (micro-)economic reasoning. Unfortunately, the conditions for the COASE theorem are rarely observed. These are: A small number of conflicting parties, no transaction costs, full information about the schedules for profits and damages, respectively, and so on.

One policy conclusion from these findings could be to try to restore the necessary conditions in order to prevent government intervention, the utilisation of courts and so on.

- *The formula of Judge Learned Hand*

Here the question is, who bears the responsibility when property has been destroyed due to a lack of care. The answer to this problem is obtained by application of the rule of minimizing the cost of prevention. Judge Learned Hand developed a formula according to which liability depends on a comparison of the burden to avoid injuries, B , to the probability that injury occurs, P , times the severity of the injury, L , hence $B < PL$. Therefore, that party is blamed for responsibility whose effort to prevent injury is lower than the probable value of damage. Scholars of L&E have hurried, however, to restate this formula in more familiar marginal terms.

- The notion of the *least cost avoider*

The formula by Learned Hand is not always applicable. Therefore, under certain circumstances, the principle of the “least cost avoider” is applied. According to this principle, damages ought to be paid by that party in a contract, who would have been able, under particular circumstances, to avoid failure of negotiation of that contract at relatively lowest cost.

To illustrate: An oil company signs a contract to deliver oil by a certain date from the Middle East to a European manufacturer. Before the oil is delivered war breaks out in the exporting country, so that the oil company cannot perform the contract as promised. If the contract did not contain a clause about the risk of non-performance, the allocation of risk - that is to say the award of damages - is not easily resolved. Without elaborating the example here the solution of L&E in short will be that a company doing business in the Middle East is in a better position than the continental company to assess the risk of war in that region and to take steps to mitigate its effects.

- The *equivalence of strict liability vs. negligence rule* under certain circumstances.

The importance of this result lies in the access to the study of incentives created for people to act in a desirable way. This is an underpinning for the view that laws are enacted primarily to prevent people from wrongdoing. It can be shown fairly easily that both regimes can create equivalent incentives to a party to act at the optimal level of care.

Starting from this finding one can then study the conditions under which the equivalence does no longer hold. The underlying idea is important for many areas not only in civil law but also in administrative law, such as environmental law, traffic and safety regulations.

5. Administrative law:

Administrative law covers political, procedural and substantive regulations. Nowadays the most familiar area of administrative law is that of government regulation of private market activities. The term *Regulation* has become the common label for government interventions. It covers a huge range of activities both in the sphere of consumers as well as suppliers.

The starting point for the discussion of government intervention in economics is the notion of “market failure”. The problem is, however, that

there is “government failure” as well. Therefore, it is not only the issue of designing and codifying government intervention in an economically optimal (and legally correct) way, but of comparing alternative means of accomplishing a certain goal.

Consider the well known problems of environment pollution. The basic problem, very frequently, is that the COASE theorem does not apply, since the transaction costs of negotiation are prohibitive. Consider the smell and smoke emitted by a plant. Many people will be affected. Even if they can identify the polluter each of them may be in a fairly weak bargaining position vis-à-vis the management. Moreover, since by assumption people are acting as “homo economicus” they may shun efforts and rely on someone else’s initiative instead. Clearly a resolution of the problem becomes unlikely under these circumstances. The problem, which is present in this example, is the so-called “freeriding” problem. Each affected individual seeks to avoid the effort (cost) associated with an activity whose result can be enjoyed jointly. Note that all could gain by co-operation, but they are locked in an overall unsatisfactory situation by their “selfish” behavior. Such a situation has been termed a “prisoners dilemma”, since it bears similarities with the problem of two burglars who, independently, have to decide whether to confess or not to confess, upon which the amount of punishment depends. Many conflicting situations in society can be conceived as “prisoners dilemma” situations. Clearly, relief is sought. This is the starting point for a vast amount of research. One way out of the dilemma could be to vest government with entitlements for intervention. But vesting politicians and bureaucrats with property rights creates a potential for “government failure”. Both seek office and high income, they may be tempted to abuse their power, etc.

The design of an administrative regulation, therefore, is not straightforward leading to the desired efficient outcome. One can think of a system of plant-inspection plus fines in the case of the concentration of emissions above some threshold. One can alternatively think of applying strict liability rules, or even of emission taxes. Whatever alternative is chosen it must be cast in a legal norm, of course. Now applying the toolbox of L&E, a fairly simple rule could be to select that remedy, which minimises overall social costs. In other words, the sum of the burden of pollution for the public, plus the cost of enacting (or “implementing”) the regulation should be minimised to the effect that the management (owner) of potentially dangerous plants has an incentive to reduce the emission to a tolerable level, voluntarily.

In many countries the standard procedure still is to make operation of a plant dependent on a permit by the environmental authority. The advantages and disadvantages of this bureaucratic procedure have to be assessed against other means such as a regime of liability rules, etc.

Since there is a tendency toward more efficient means of environment protection in many countries nowadays, the problem addressed in that example might sound very familiar to you. Unfortunately, there are several problems associated with such a procedure which are easily overlooked. Let me draw your attention to three major problems.

First, the weaknesses of collective decision making, the distorting impact of interest groups on the resulting regulation and the so-called “principal-agent” problem.

The difficulty of unambiguous voting: Whenever a legal order is established a political decision must be made. (As has been mentioned in the introduction, the problems of political - or non-market - decisions from an economic perspective are treated in the science of “public choice”).

Political decisions are achieved through voting. Voting does not only take place within constituencies concerning the nomination of delegates, it also is the means by which the legislature and all kinds of committees take decisions. Unfortunately there is no strategy-proof way of voting. That is to say, democratic decisions are always in danger of being manipulated. One peculiar brand of strategy is so-called rent seeking.

Consider the issue of a new superior way of avoiding pollution. Normally one can expect that these regulations create additional cost for the affected industries. The citizens in turn, who are primarily affected by the prevailing pollutant, are normally not very well organised. In contrast there may be an interest group consisting of spokesmen of the most affected industries. They may spend a lot of time and money in lobbying and convincing delegates in the legislature of the detrimental effects on workplaces, etc., if tough regulations would become effective. Skilful interest groups may very well be able to convince a sufficient number of delegates not to give in to tight regulation. It is economically sound to invest up to the amount the industries are facing as additional costs, stemming from the proposed new regulations in their prevention, since the individually optimal situation is the “status quo”. This, in a nutshell, is “rent-seeking”.

It is easy to understand, therefore, why economists have always stressed proposals of solutions to the problem of environment protection, which are

“self-enforcing”. But they also have pointed to the problem that a regulation, once enacted, is necessarily reinforced by an independent judiciary, who only checks whether the prevailing regulation is compatible with more fundamental legal rules (the constitution). Therefore, in cases of conflicts they have opted for a certain degree of discretion from independent courts. Thus, economically optimal standards of conduct could be enforced in case the prevailing rules are violated and victims turn to the courts.

As becomes immediately apparent, we are now talking exactly about George Stiglers suggestion: That we should think in terms of alternative institutions which can assist in achieving fairly optimal outcomes.

Similar procedures hold true for a vast number of issues, from safety regulations to the so-called barriers to entry into a market. The “principal-agent” problem remains to be addressed.

Most government activities can be cast in “principal-agent” relationships. Generally speaking, such a relationship is established when one person or entity - the principal - delegates the performance of a work to another person - the agent - together with the property rights necessary to act on behalf of the principal. The agent in turn is obliged to act in a particular way by contract. The most familiar example is that of the head of an office and her subordinate. Note however that even the relation between parliament and the bureaucracy at large can be cast in terms of a principal-agent-model. For the sake of completeness it may also be pointed out that many situations in private life turn out to contain agency, such as consulting a medical doctor or a solicitor.

According to the first postulate of L&E (see supra), both the principal and the agent follow individual interests under several constraints. Consequently, the agent will not necessarily comply with the principal's intentions. Quite naturally, the principal does not dispose of information about the agent's performance at any time. Therefore, devices are required which restrict the agents discretion. One may think of appropriate incentives or a good deal of monitoring on behalf of the principal. The efforts of monitoring are once more a source of transaction costs. Assuming away the possibility that the principal's request leads to inefficiency, one is left with the problem that insufficient monitoring leads to considerable deviations from a desired result. This basic framework can be applied to a large variety of problems in public administration. One particular feature deserves attention, *corruption*.

Corruption is present, when the agent is misled to abuse his entitlements for the mutual advantage of a client and himself, thus disregarding the principal's order. The analysis of corruption borrows from another important field of research in L&E, crime and punishment. In this field it is shown that committing a crime by a rationally acting individual can be perceived as a "demand" for crime, depending on its "price" (time for preparation, necessary tools and so on). But the actual amount of crimes depends on the amount of resources which are devoted to deterrence. Hence, there exists an equilibrium level of crimes, where the demand schedule and the cost curve of deterrence intersect. It can now be studied what measures and at what cost must be undertaken in order to reduce crime to a minimum level. When this concept of "crime and punishment" is applied to the problem of corruption, the principal's efforts to curb misconduct are at stake. Unfortunately, shortage of space does not allow to go into details.

Turning to a few more general issues:

A good way of approaching problems of regulation is to work through a checklist such as the following:

- What are the incentives (concerning the way in which property rights are used)? Here, not only the addressee of the norm but also the potential victims ought to be considered. To illustrate: Owners of dogs could be made strictly liable for harm, which dogs could do to innocent pedestrians. But while there will be an incentive for dog owners to perform carefully, by the same token non-owners of dogs may be induced to trust in the effectiveness of the regulation and thus not care at all about the reaction of dogs. This, however, may be wrong since it shifts an undue burden of care to dog owners. Similar considerations apply in the safety regulations of traffic.

Note, that I have just illustrated the notion of "moral hazard" on behalf of non-owners of dogs.

- What are the risks involved in a particular rule? To illustrate, assume that the producers of all motive power are made subject to strict liability. Consequently, they may seek an insurance. But what happens in a small country where one enterprise in the business holds a natural monopoly. If there are not sufficiently numerous units for risk pooling and risk spreading, respectively, the strict liability rule is likely to fail. Clearly one may find ways out of such a dilemma, but

one must be aware about the difficulties one creates by adopting some particular solution.

- What are the transaction costs? A regulation should allow for the minimisation of the cost of finding out causes and reasons, of assessing the amounts of damages and of supervising and monitoring the addressees of some regulation. Therefore, the cheapest way of handling such problems ought to be sought.

The problem with the application of L&E to administrative law is that it can only give advice on how to approach some particular problem. Normally, there are no ready solutions available. However, this caveat holds for the entire approach. This is just one objection which can be raised. Here are some more:

6. Caveats:

It is frequently argued that the orientation towards efficiency leaves too little room for issues of equity or justice. There are controversial views among scientists on this point.

All actions must be valued in money terms; critics claim that this is not possible in a variety of cases (e.g. the value of life and health). However, such difficulties can be partly overcome by evaluating the reduction in the probability of injuries that might occur in money terms.

The evaluation of actions can be contradictory depending on the viewpoint. To illustrate: the revealed willingness to pay for protection against harm may deviate from the evaluation of the endurance of harm. More specifically, if a person is asked how much she is willing to spend in order to be protected, the sum may considerably differ from the sum she is asking for as a compensation for endurance.

L&E seeks general criteria whereas law is case-orientated. One precondition for generalisations is that terms are less exactly defined than in legal practice.

7. Notes on the roots of L&E:

Law and Economics is an interdisciplinary approach, which has emerged from research in the American universities of Chicago, Yale, UCLA, Berkeley, Stanford and several others. It grew out of two research agenda: Deregulation and the re-design of car accident regulation. In some law schools its methodology, meanwhile, dominates the curricula of courses. The American Law and Economics Association, founded in 1991, has by now some 400

members. L&E is quickly gathering ground in Europe. The centres of teaching and research are Hamburg, Gent, Maastricht, Rotterdam, Manchester and Lund, but depending on individual interests of researchers programmes have also been established elsewhere (e.g. Vienna). The European Association for Law and Economics by now has several hundred members; it was founded in 1983.

The roots of L&E were already founded in Europe in the late 19th century. The Austrian school of economics was most influential. It also received valuable support from early Public Administration. Joseph von Sonnenfels, an advisor to empress Maria Theresa, may be named here and Lorenz von Stein. Eugen v. Böhm Bawerk, Joseph Schumpeter and Friedrich von Hayek have contributed valuable insights. The research agenda were adopted and rigorously developed by writers such as Coase, Alchian and Demsetz, Posner, Landes, Calabresi, Manne, Williamson and several others. Presently, there are many brilliant lawyers as well as economists doing research in this field and there are at least five learned journals, which are exclusively dedicated to L&E, but many law journals such as the Yale Law Review regularly publish articles in the field.

Recommended Reading:

The most influential book still is:

Richard Posner, *Economic Analysis of Law*, Little, Brown and Company, 2nd ed., 1977

A comprehensive textbook with emphasis on common law:

Robert Cooter-Thomas Ulen, *Law and Economics*, Harper Collins, 2nd ed., 1996

Easy to read:

Frank H. Stephen, *The Economics of the Law*, Iowa State University Press, 1988

Illustrative because of its examples:

A. Mitchell Polinsky, *An Introduction to Law and Economics*, Little, Brown and Company, 1989

More advanced and containing rigorous analysis:

Steven Shavell, *Economic Analysis of Accident Law*, Harvard University Press, 1987

A good survey of the underlying "new institutional economics" is provided by:

Thrainn Eggertson, *Economic Behaviour and Institutions*, Cambridge, Mass. 1990

The gist of administrative law is covered by:

Anthony Ogus, *Regulation, Legal Form and Economic Theory*, Oxford 1994

The interdependence of law, economics and politics is treated in the following:

Daniel A. Farber and Philip P. Frickey, *Law and Public Choice*, Chicago 1991

The main Journals:

The Journal of Legal Studies

The Journal of Law and Economics

The International Review of Law and Economics

The Journal of Law, Economics and Organization

The European Journal of Law and Economics

1.4 PUBLIC ADMINISTRATION IN CENTRAL AND EASTERN EUROPE: CASE STUDIES OF ADMINISTRATIVE PROCESSES

*Denis J. Galligan**

1. Introduction:

In the following paper, I will describe in brief outline a number of case studies conducted in selected countries in Central and Eastern Europe. The main object is to give an account of how the studies were conducted, the purposes for which they were conducted, and some of the conclusions to be drawn from them.

Before embarking on that analysis, it is worth making clear what we may expect from such studies. The first and rather obvious result is better knowledge and understanding of administrative law as it operates in a practical context. Secondly, it is important to understand that legal issues are also practical issues in the daily lives of administrators. The law affects the procedures followed, the mode of acting and deciding, and it mediates the relations between the administrator and the citizen. The administrator's general duty is to try to translate laws, which are often complex, into practical cases, and in doing so, the administrator is guided by the law in various ways. Thirdly, case studies help in the understanding of how the administrator deals with practical legal issues. How does the administrator bridge the gap between the abstractions of the law on the one hand and the practical realities of decision-making on the other hand? Fourthly, the analysis of administrative processes in context helps to show how administrators anticipate legal problems and take action to prevent or avoid them arising.

Against this general background, let us now consider the case studies mentioned.

2. Background to the Case Studies

In each of the countries of Central and Eastern Europe in recent years, a great deal of effort has gone into changing the constitutional structure and in adopting a modern, democratic Constitution. Now that the constitutional reforms are complete, or at least well advanced, it is important

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to look at the second stage, namely, the reform of administrative law and administrative institutions. This also has been an area of rapid change and reconsideration. At the same time, however, legal reforms tend to build on what has gone before rather than to attempt radical and wholesale change. It is interesting to note in the region that most of the administrative law systems were established during the communist period, or in many cases in the precommunist period, and, with various important amendments have tended to continue in the democratic period. One of the conclusions that is clear from this process is that radical social and political changes can often be accommodated within the existing legal structure which in turn changes only incrementally.

3. Objectives of the Studies

The principal objectives in undertaking case studies in the area are as follows: firstly, to understand the state of administrative law in selected countries; secondly, to see how public administration works in those countries but in a variety of different situations that will be explained below; thirdly, to formulate general conclusions about the process of change at the level of public administration and administrative law which may be important for policymakers, law reformers, and the public administration itself.

4. The Case Studies¹

In devising the research project, we thought it important to choose a variety of different administrative processes which would demonstrate a reasonable crosssection of administrative activity. For this purpose, a distinction was drawn between individualised and collective processes. *Individualised processes* refer to those aspects of administration concerned with deciding cases affecting particular individuals or groups. These can be divided into three broad categories: benefit-conferring processes, burden-conferring processes, and administrative investigations. Benefit-conferring processes cover an enormous range of administrative activities concerned with distributing to individuals and groups benefits such as licences, welfare, permissions and privileges, and a host of other goods. The grant

of licences to open private schools is the example chosen in the case studies to illustrate this type of process.

1 The case studies were sponsored jointly by the Constitutional and Legislative Policy Institute (referred to as COLPI) in Budapest and the Centre for Socio-Legal Studies in the University of Oxford

Burden-conferring processes refer to those administrative actions which impose upon persons and groups burdens which do not otherwise exist.

These burdens range widely, and include such matters as taxation, financial impositions of other kinds, restrictions on the way different activities may be conducted, and prohibitions on certain activities. To illustrate this aspect of administration, we chose the conditions set by the administration for the discharge of effluent into waterways by industrial concerns. Discharge of effluent is prohibited except under licence, the interesting question then being what the conditions are within the licence.

The third type of individualised process is the administrative investigation. Administrative agencies of many kinds have extensive powers to investigate the affairs of private concerns. These range from financial matters relating to banking and insurance, to the conditions of hospitals or other institutions, and include such matters as health and safety in restaurants. Indeed, the last of these is the subject chosen for this case study. The idea here was to examine the way that inspections are carried out in order to check on the health and safety aspects of restaurants. This process raises issues that are related to but quite different from those in the first two categories.

The other main group of administrative processes is referred to as *collective processes*. This is not a perfect way of describing this category but refers to those processes involving policy choices, where a range of persons and groups, and sometimes the society generally, are affected by the choices. Such policy choices may occur in different contexts. One is where the administration makes delegated legislation. This is often referred to as formal rule-making, which is illustrated here by the minister's duty to make rules for the grant of maternity benefit. Another is where a minister or other authority in the exercise of a discretion has to draw-up informal guidelines as to how the discretion will be exercised. These are referred to as informal rule-making and are well-demonstrated by the guidelines devised by the police in dealing with drunks on the street and the random stopping of cars. The third situation is where a specific issue has to be settled but in the course of doing so policy choices have to be made. The example chosen here was the decision to grant permission for the creation of a waste disposal site.

5. Methodology

The case studies were conducted by various researchers in five countries: Bulgaria, Estonia, Hungary, Poland, and Ukraine. These countries were

chosen mainly on the grounds that each represents a different historical and cultural tradition within the region. Within each country, a small group of researchers was responsible for obtaining the necessary legal materials, analysing those materials, and then conducting empirical research into the way the different processes worked in practice. This latter part involved examination of non-legal materials and conducting interviews with interested parties and officials.

The researchers in each country then passed their reports to a central research committee organised from the COLPI in Budapest. The research committee, under my direction, then prepared a shorter analysis of each case study. These analyses, together with commentaries, will be published in a forthcoming book entitled *Administrative Law and Process in Bulgaria, Estonia, Hungary, Poland and Ukraine*, edited by DJ. Galligan, C. Nicandrou, and R. Langan.

The general purpose of the research was to analyse the different administrative processes in each of the countries, and then to make some comparative analysis across the five countries.

The underlying idea here is that, while each country in the region has learnt a lot about western ideas and western experience, most countries are relatively uninformed as to developments in their own locality. It is hoped that the comparative element in these case studies will be of particular benefit to countries in the region. Indeed, they should be of benefit not only to the countries studied but to other countries.

6. Findings

While the richness and interest of the case studies cannot be captured in a few paragraphs, it may be interesting, nevertheless, to note some of the points which emerge from the research.

- (i) Perhaps the outstanding feature, which is all too obvious to anyone doing research in the region, is the great diversity from one country to another. This is an interesting issue which throws light on the relationship between law on the one hand and culture and society on the other hand. In the first place, the countries of the region have a strong shared experience of the last fifty years or more. At the same time, each country has a history and a set of traditions to draw on. The interrelationship between this shared experience and cultural individuality is worth much closer study than was possible here. A related theme is the tension and dynamic between continuity and

change. As noted earlier, all countries have gone through rapid and dramatic change in the last few years; at the same time, there has been great continuity of law from the communist to the post-communist period and into the democratic period.

- (ii) Another interesting finding is that administrators in the region try, conscientiously, to know and understand the law relevant to the issues before them. This does not mean, however, that all administrators are well-trained and educated in their tasks. But it does mean that, so far as we were able to test in these case studies, the administrators are serious about their work and attempt to do the best job possible in circumstances that are often very difficult and where resources are very scarce.
- (iii) Where there is an administrative procedure code, administrative processes seem to work more smoothly and in a more orderly fashion than when there is not. Administrative procedure codes provide guidance in most areas of administrative decision-making (leaving aside the legislative aspect of administration), and there is no doubt that administrators find it more difficult to operate in the absence of such a code. In those circumstances, procedures tend to be scattered across a range of laws and regulations, they are often difficult to locate, and there is generally a much less orderly arrangement.
- (iv) The procedures relating to individualised processes are much more highly developed than those in relation to normative acts or delegated legislation. It is interesting to observe that in those countries which do have codes of administrative procedure, they do not include the legislative aspects of administration, but are confined to individualised processes. One immediate policy proposal emerging from the case studies is the need to address this issue of procedural codes for the more collective aspects of administration.
- (v) While one of the case studies concentrated on informal guidelines, it soon became clear that informal guidelines play an important part in all aspects of administration. Our researchers discovered that, in all individualised processes under investigation, the administrators resorted to various informal rules and guidelines in helping them to translate a discretion into workable practices. This conclusion could be generalised and the suggestion made that insufficient research has been conducted into the process of informal rule-making and how it affects administrative decision-making.

- (vi) Another conclusion which emerged from the research is that the law is often complex and difficult. The outstanding example of this occurred in obtaining permission to create a waste disposal site. Indeed, the process is so complex and dependent upon so many different agencies and departments, that it is referred to in Poland as the “Way of Sorrows”. The problem of complexity and difficulty is endemic in the region. Laws are written in archaic language, they are often abstract and difficult to interpret. Moreover, the laws relevant to a particular administrative issue are often diverse and the administrator needs to be familiar with several statutes and sets of regulations in order to make a decision on one matter. This again suggests some urgent revision on the part of the respective countries.
- (vii) Our research did not reveal any clear evidence of bias or lack of independence in decision-makers. It is difficult in a research exercise of this kind to penetrate closely into the workings of the administration, but at least in the areas investigated here no evidence of impropriety or bias appeared.
- (viii) Finally, it is clear from our studies that the knowledge of the law on the part of many officials is very limited. This is not to say that the officials, as noted above, acted with anything other than serious concern; it means merely that they were very often inadequately trained for the jobs they were asked to perform. This problem of lack of knowledge applies not just to the substantive law, but also to the procedures to be followed. As might be expected, knowledge and understanding of the law diminished the further down the administrative hierarchy one went.

These are a few of the more interesting findings which emerged from the case studies. It can be seen that while they are of interest in their own right, a number of them have important consequences for law reform and policy making. It is to be hoped that many involved in public administration in the region will read the forthcoming report of the case studies; it is also hoped that other researchers will take the lead and examine in more detail some of the issues raised in these initial studies.

Section 2

**Training Developments of
Administrative Law**

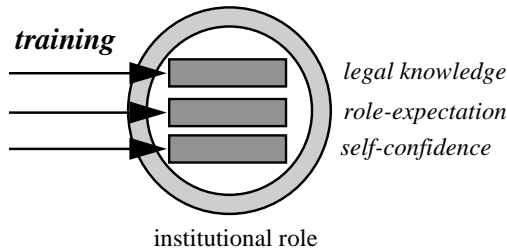
2.1 TRAINING IN THE FIELD OF ADMINISTRATIVE LAW

*Friedrich Lachmayer**

Administrative law courses for civil servants are conducted by a training agency. However, as far as the addressee is concerned, a distinction is to be made between the organisation, the official role (institution) and the civil servant. The training courses are not designed for the organisation or for the official role but for the civil servant.

The need of the public administration for a certain type of civil servants is reflected in the training. However, the needs of public administration must be distinguished from the needs of the citizens, who harbour certain expectations in respect of the organisation, the official role and the civil servants. Can the needs of the public administration and the needs of the citizens be reconciled? To what extent can these requirements be met in the training course and to what extent is the training as such independent of them.

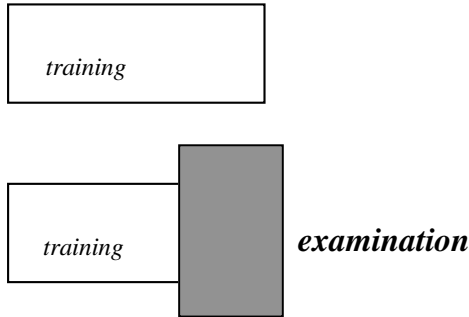
The aim of the training course is to strengthen the civil servant's institutional role. First, it is necessary to strengthen the civil servant's self-confidence, then his or her role awareness and finally to improve his or her legal knowledge.



An official of an organisation may be faced with the problem of estrangement. For the civil servant does not only have to fulfil a certain function but also wants to lead a private life. The polarity between these two fields, which might be contradictory, can cause problems for the civil servant as an individual and for his or her situation. The training course may help solve this problem or to alleviate it to some extent.

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It does make a difference if a training course is completed by an exam as opposed to a course where there is no examination. An examination invariably means stress, which has a decisive impact on the training. To this argument one can reply, however, that the entire educational system is based upon examinations and that consequently also civil servants are expected to sit for an exam in an administrative law course.



As far as the training as such is concerned, one must distinguish between the course, the individual subjects that are being taught and their contents.

In preparing a curriculum one must consider the question of how many law courses are to be conducted per year, how many hours each course shall last and what to teach in these courses in how many hours.

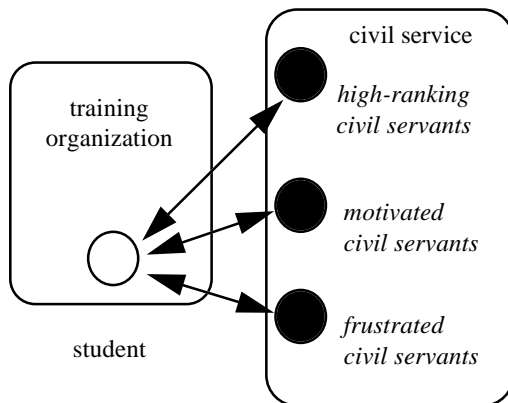
As far as the contents are concerned, the question arises as to who determines their distribution, i.e. who is responsible for the establishment of the courses, for the individual subjects and for the distribution of the contents.

As regards the curriculum of the course, one must consider the question who is responsible for the preparation of the curriculum and who determines what is to be included therein.

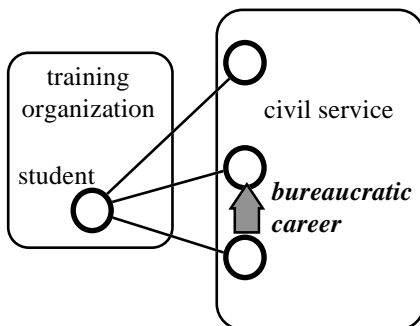
General aspects of curriculum development may include the problem of how to select the relevant subjects of law to be taught, what generates the need for the different subjects of the courses and how these courses can be integrated into the system of courses offered by the school of public administration.

The students of the training organization may come from various administrative fields. Very rarely do high-ranking civil servants attend these courses. Very often it is rather the motivated civil servants that are interested.

And sometimes also frustrated civil servants enroll for the courses in an attempt to flee their daily chores.



A civil servant's career is often closely linked to his or her readiness to become a student of a training organization. This is true at least of the lower and medium levels of public administration.



The Austrian Federal Academy of Public Administration offers basic training courses, in-service training, leadership training and also training courses on European integration.

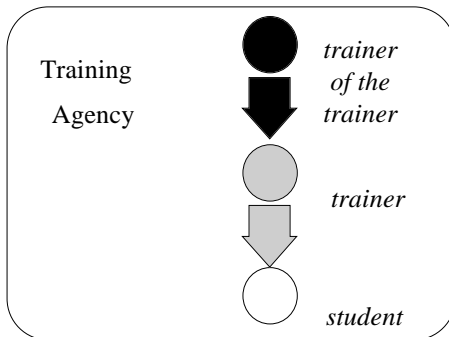
Civil servants have been educated at school where they have adopted quite a number of views they are still adhering to in their workplace. Basic and further training can be provided to them either on the job or through a special training organization.

Students can attend courses either in the course of their basic training or after finishing school. Training after school can also be provided by some sort of school or directly in the workplace. There may also be a combination of the two training methods.

The objective of the training course may be to increase the civil servants' specialization or to provide some sort of further education, i.e. in particular by offering subjects they were unable to study previously at school but which they now need for their present job.

The training organization may either rely on teachers that have been recruited from public authorities (internal teachers) or on external teachers. In most cases, the students of the training organization will come from the administrative field (internal students). But with regard to some courses such as those offered on European law, it is also conceivable that external students might attend the courses of the training organization on payment of a certain amount.

An important but also delicate issue is the question who is going to train the trainers. The trainers teach the students, but who is going to train the trainers? Teachers are often authoritarian personalities and unwilling to learn something themselves.



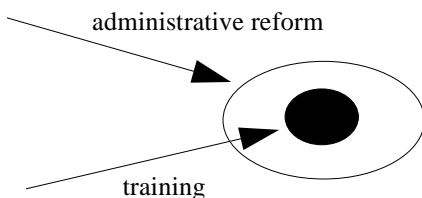
Training in the field of law can be provided to students during the school year or after school but can also be designed for lecturers.

Lecturers can be trained by the school itself or through special programs. What persons are to be chosen as trainers? The basic question is how trainers are made familiar with the new contents they are to teach their students.

The activities of the Academy of Public Administration must not be seen in an isolated manner. What is important is the co-operation with other

administrative institutions and law schools. In this context the question arises as to who is going to pay for the training. It is quite conceivable that those attending the courses should do so. However, in the majority of cases the costs are borne by the training organization itself or by the respective administrative institutions.

A major problem consists in the fact that the training courses are generally designed for individuals, i.e. the civil servants, while the organisation they work for is not being changed accordingly. The training program is tailored to individuals and in most cases is not accompanied by an administrative reform. However, without an effective restructuring of the public administration, which would indeed be an important task, the effect of the training will remain rather limited.



A completely new aspect of training civil servants in the field of administrative law, is legal informatics, i.e. training by computer.

Although computerized training may be structured on a logical basis, it is nevertheless isolated persons that are confronted with a machine. The communication with a machine reminds us of the philosophy of Leibnitz according to which the individual “monads” do not get in contact with each another. There is indeed the danger that the law that has been designed for human beings is being turned into a machine law.

However, there is basically no possibility to halt the trend towards a machine culture, thus making it a challenge which can best be met by relying on teamwork as a social formula.

2.2 CASE STUDY: TRAINING IN ADMINISTRATIVE LAW FOR EU ACCESSION

*Mik Strmecki**

Project Objectives

The primary purpose of the training module is to start a systematic, organised and unified training programme for employees in the state administration for Slovenia's accession to the European Union (hereinafter EU). This should result in better awareness by state administration employees of the unified national approach of Slovenia to Europe and the necessity for acquiring basic knowledge skills and establishing relations for the state administration as a whole.

The goals of the project have been defined as follows: (1) preparation of a comparative study on EU-related training in comparable European countries; (2) execution of the training needs analysis; (3) designing materials for the trainer and participants of the module; (4) pilot run of part of the module and evaluation of the module.

Project Background and Target Group

The basis for the module was Slovenia's accession to the EU with the state administration as the leading competent institution. In June 1996 the Republic of Slovenia and EU member states signed an Association Agreement. The EU-related training should be designed in a unified way for employees in senior positions in the various parts of the state administration. This is also included in a document adopted by the Government of the Republic of Slovenia in July 1996. However, integration into the EU does not represent the only developmental goal for Slovenia and its state administration. There are also requirements for the modernisation of the state administration as an organisation (modern principles of management in the public sector and rationalisation of work processes). In September 1996 the client of the module and the trainers signed an agreement on designing training modules which included the nature of the work, the target group of the training, the extent and time aspects of the work. Another starting point for the module is various projects which are sources of information and perceived needs (general training needs analysis in the state administration).

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In designing the module the project team based their work on several models and tools, among which are the principles of project work, application of systems theory in the learning process (closed loop including steps from the training needs analysis to the evaluation of the designed programme), consulting cycle, and Kolb's empirical model; among others. Of essential importance is the systemic approach in the following stages: definition of goals and expected work results, comparative study training needs analysis, definition of starting points for a ten-day module, designing the materials for the trainers and participants for a four-day module, pilot run of a part of the module and evaluation.

Training Needs Analysis; Methods and Findings

The analysis was performed in the following two major parts:

- comparative study of EU-related training in Slovenia outside the state administration and in the European countries with special stress on the systems in the countries close to Slovenia, e.g. Austria and Hungary;
- analysis of needs for EU-related training within the Slovenian state administration.

The first part was covered in Slovenia by means of a survey in Slovenian educational institutions and private companies involved in training, and by summarising various reports on the training systems in European countries (national and SIGMA international reports). The survey was based on a special questionnaire on types of education or training, duration, contents, target groups, learning methods, participation and other relevant questions.

For the training needs analysis in the Slovenian state administration we used the basic information from the project on general study of training needs in the state administration. The work methods used in the aforementioned project were structured interviews, surveys, and the critical incident method.

In relation to the EU we used the interview method in five sample ministries where we had the opportunity of working with employees in senior positions. The interviews were structured, since they were prepared in advance and in a comparable form. The response to the survey in all ministries and professional offices of the National Assembly was almost 70%. The questionnaire inquired (1) whether and to what extent the employees of various ministries take part in different forms of training related to European integration (number of participants, duration, methods,

organisers - internal, external, Slovenian, foreign and other relevant information) and (2) what are their wishes and needs for the future. The answers of the organisational units included all the activities of the work processes which had to be distinguished from the mere training needs.

The organisation of education and training of employees in the state administration is very diversified in the described European countries, meaning that there is no best and uniform formula valid for all countries. Taking into account various and specific elements, each country has to find suitable forms of problem solving, including the ones related to the process of accession to the EU, which is a highly interdisciplinary topic. In Europe there are, on the one hand, extremely centralised education and training systems for employees in the state administration (France) and extremely decentralised systems (the Netherlands), on the other hand. The closest and most adequate comparisons for Slovenia are comparisons with countries which are in a similar situation or have a similar historical background. It can easily be recognised that the Austrian and Hungarian systems definitely deserve to be studied in more detail. The central Austrian Institution - the Federal Academy of Public Administration - is a major organiser of seminars, of which the so-called "European Academy", with 16 one-week seminars and 125 graduates and "EU Curriculum" with specialised topics and 35 graduates deserve special attention. Austria offers 190 seminars attended by over 1200 employees.

Among academic institutions in Slovenia, EU-related programmes are carried out by the Faculty of Economics, Faculty of Law, Faculty of Social Sciences, School of Public Administration and Faculty of Organisational Sciences; the institutions co-operating in various forms of training include GEA College, Center Brdo, Gospodarski vestnik, the Chamber of Economy of Slovenia; among others. There is no co-ordination with regard to the schedule or the programmes, nor are the programmes adapted to the requirements of the state administration.

This general information can be translated to a concrete example of training employees in the state administration for Slovenia's accession to the EU. We can establish that the curriculum/training programme should include two parts: the first touching directly upon the general and current problems of Slovenia's accession to the EU and the second targeted at changing and improving the work of state administration employees according to the aforementioned example of efficiency, effectiveness and productivity in the private sector. The ministries deal with EU-related

topics and, consequently, with the training, at very differing intensities. Due to the nature of their work, among the most active are the Ministry of Foreign Affairs, Ministry of Economic Relations and Development and professional offices of the National Assembly. The most intensive training on general as well as specialised EU topics is being carried out by the European Institute of Public Administration in Maastricht, where the Office for European Affairs acts as co-organiser. Everywhere there is the need for a systemic organisation of this type of training which means uniform and continuing training carried out centrally. Apart from the basic knowledge on the EU and Slovenia's relations with EU member countries, quite a lot of work has to be done in the modernisation of work procedures and methods of the state administration in order for it to be able to function in line with the European administration. Dynamic learning methods with a lot of practical work as well as a time module type of training are desirable. The existing forms of training cover only general needs and not the specific needs of the entire Slovenian state administration and its individual ministries. Courses organised by the EU and carried out by their trainers are very well attended. On these topics it would be unreasonable to try to compete with them from both professional and financial points of view; still, the development of our own forms of training should not be neglected.

Module Design

The guiding idea of the module corresponds to the basic principles of New Public Management - customer orientation, control by set objectives, decentralisation, delegation, privatisation and the distinction between political and professional functions. There has been a paradigm shift in the public administration from the principle "make as few mistakes as possible" to the principle of "effectiveness and efficiency in the service of the customer".

We designed a broad ten-day module concept in which we presented the curriculum of a complex course by means of a working context, objectives of training, specific topics, methods and time frame. The five-day programme for the first part entitled *Slovenia and the EU* includes the following topics:

1. the Slovenian administrative system,
2. institutions and decision-making in the EU,
3. European legislation,

4. relations between the EU and signatories of European agreements,
5. the common market,
6. economic integration,
7. political co-operation in the EU.

The part entitled *Modernisation of the Slovenian state administration and improvement of the working process* was also a five-day course and includes the following modules:

1. organisational development and changes,
2. public finance and public procurement,
3. planning,
4. personal effectiveness,
5. leadership and management,
6. project management,
7. decision-making,
8. information technology

Two two-day parts, Slovenia and the EU and Project Management, form a separate module. The module design was based on the findings of the training needs analysis and in the context of the general module. Among the approaches and methods used were adult education, workshop concept, on-the-job training, steps of the learning process and training evaluation.

Training Objectives

After completing the training the participants shall:

- understand the broader EU context and know the milestones of the integration development,
- be familiar with the decision makers in the EU and distinguish individual institutions and their competencies,
- understand the structure of the EU budget and areas of co-operation,
- understand the history of Slovenia's accession to the EU,
- have an overview of the pre-accession strategy, its tools and the White Paper,
- be able to analyse the pros and cons of Slovenian's integration into the EU,
- have developed the following skills: communication, group work, negotiations, discussion and presentation,
- be familiar with theoretical principles of project management and be able to distinguish it from other forms of work,

Evaluation

The evaluation of the module by the client and the participants of the pilot run brought us to the following conclusions:

- programme implementation should be introduced as soon as possible,
- special importance is attached to the uniformity of the programme for the entire state administration
- there is a need to link both major parts of the module i.e. the one on the EU and the one on the modernisation of the state administration as an organisation,
- topics and methods of work are identical to the requirements of work with experience and topical open problems included.

The pilot run of a part of the module was evaluated by comparison between the set goals and achieved results of work and analytically by means of the questionnaire. The comparison unambiguously proved that the set goals had been achieved or even surpassed, particularly due to the interactive dynamics of the learning process.

The questionnaire included ten key questions on the seminar. The highest grade (fully agreed) was 10 and the lowest grade (completely disagree) was 1.

Among the positive features of the seminar the participants pointed out:

- different approach, organisation, course of the seminar,
- good preparation of the lecturers,
- approach to the subject and topic design, illustrative presentation of the topic, topics discussed, noteworthiness and usefulness of both major topics,
- dynamics, opportunity for active participation, discussion, communication,
- roundtable discussion, exchange of opinions,
- practical work with a project approach.

Based on the valuable direct experience of development and partial implementation we think that some modification are required, among which time evaluation is the most important. In our opinion a longer period of time for module design is required on the one hand; but alternatives in the implementation of the training should be considered carefully.

Among the approaches that the project team consider suitable for the future are:

- involvement of two or more training programme designers,
- a thorough training needs analysis,
- consideration of established theoretical principles in designing and implementation of the training,
- a uniform concept (common thread), internal consistency of courses and their parts,
- linking various types of learning goals, related to knowledge, skills, awareness, relations and values,
- careful preparation of materials, training dynamics, including practical exercises and group work with a special stress on professional experience of the participants and continuous evaluation of training.

Section 3
Curriculum for
Administrative Law Courses

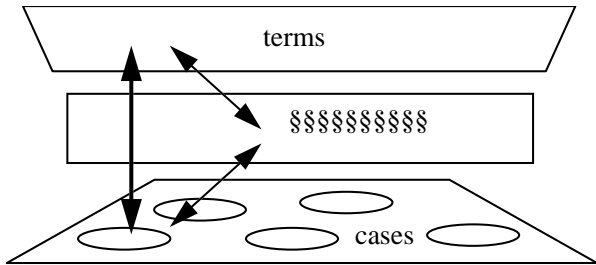
3.1 CONTENTS OF THE CURRICULUM

*Friedrich Lachmayer**

The fundamental issue is related to the legal knowledge of civil servants. The contents of the curriculum are designed to optimize the amount of legal knowledge.

Professional legal knowledge is characterized by several elements: For one, a professional jurist is able to give precise citations of laws, not only in their present version but also in the light of the dynamics of such texts. What is similarly important is a profound knowledge of legal language and phraseology. It is not sufficient, though, to restrict one's understanding to mere words, but it must be understood that a precise knowledge of legal terminology is also required. The purpose of professional legal knowledge is to enable the civil servant to arrive at a structural juridical interpretation of real-life situations.

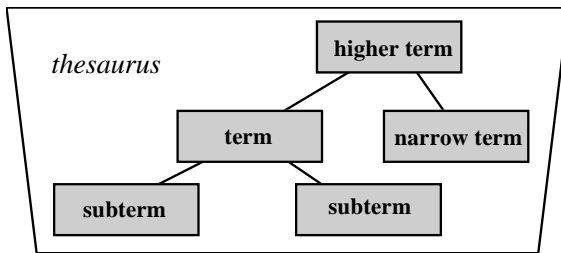
It is against the background of legal texts that real-life situations are converted into cases of law. A real-life situation is characterized by the fact that questions concerning an action or a situational reaction are raised. As against that, we speak of a case of law when the real-life situation is already dead, i.e. when that situation has turned into a subject-matter contained in a juridical file.



A legal text is simply a kind of professional user interface. The deep structure of the legal system is, however, characterized by structural juridical concepts. These structural juridical concepts are further elaborated by jurisprudence, especially by legal pragmatics. The system of structural juridical concepts may or may not find its expression in legal texts.

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Some 150 years ago, the school of terminological jurisprudence was concerned with a hierarchy of legal terms and concepts. This traditional school of terminological jurisprudence has re-emerged in its modern form as law information science. It is in particular in regard to the thesaurus model that this historical notion has been revived as a hierarchy of legal concepts. This means that a specific terminological unit can be further broken down into its sub-units. There are also relationships with higher terminological concepts and related terms. This model appears to be quite clear and logical although it is at the same time somewhat difficult to apply the thesaurus model to legal texts because these texts are frequently not produced according to the rules of logic.



The legal knowledge of civil servants must take into consideration not only the textual layer of legal provisions and the underlying layer of legal terminology but also the situations of real life and the juridical cases derived therefrom. It is one of the abilities of the civil servant to combine the legal concepts with the legal texts and the legal situations and cases.

Administrative law is not only addressed to administrative agencies but also to the people as individual citizens. People are involved in administrative proceedings. The curriculum must therefore not only refer to the role of the respective authorities but also to that of the individual citizens who are affected by such administrative proceedings.

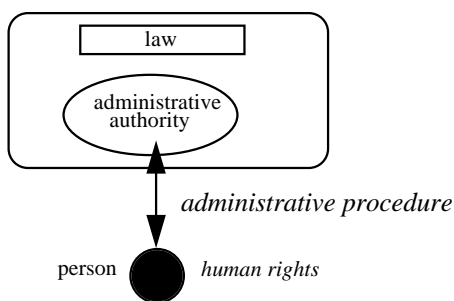
In Austria, the curriculum for the education of jurists comprises supranational law (European law) and constitutional law. Other subjects include administrative law and the law of administrative procedure. Further important subjects are budget law, the civil servant's institutional statute and the law regulating the public service.

Certain questions arise with regard to the relationship between the state and its citizens. How can the idea of public participation be realized in the

curriculum of legal education for civil servants? To what extent are civil servants responsible, not only to their government but also, and particularly so, to the citizens?

Art. 23 of the Austrian constitution provides that agencies and institutions under public law are responsible for the injustice which is done to an individual citizen in connection with the execution of the law by unlawful conduct against whomsoever.

Human rights are a very important aspect which needs to be considered here. The administrative authorities have to observe such aspects of human rights as are related to their field of action. The addressees of human rights legislation are not only administrative authorities, but just as much also the lawmakers. The Austrian Constitutional Court plays an important role in the protection of human rights. Individual laws transform the principles of human rights through the working of their own rules, which is why individuals outside the state are not directly bound by the constitutionally guaranteed human rights, but by specific acts by which human rights have been implemented, such as the Penal Code.



In everyday legal practice, the principle of equality plays an important part. The main problem with the principle of equality is not its lack of rules or substance but rather its insufficient degree of implementation. Thus, we find time and again that some people are more equal and some are less equal than others. The constitutional principle of equality was supplemented with an additional provision concerning handicapped persons, and, similarly, there are initiatives in constitutional law designed to ensure real equality in the face of de facto inequality. The contents of the curriculum do not only have to take into account the structures of the various national states but also the structures of the international community. From a legal point of view, such formal structures are important. When seen from a practical

angle, it is rather the informal structures and the understanding of these informal structures that are relevant. The curriculum should therefore not only focus on the texts and theories but also on the practical aspects of the law.

For the citizens, local administration is very important, for it is primarily agencies of local administration they have to deal with. Federal administration as exemplified by government institutions is very often merely a supervisory body for local administrative authorities. The contents of the curriculum should therefore include the roles of both federal and local administration as well as the relations between the central and local levels of administration.

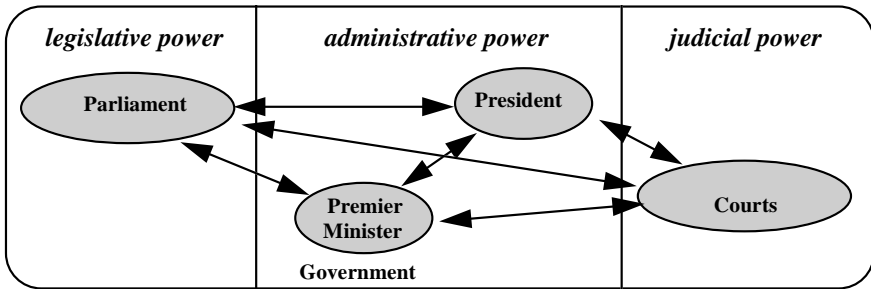
Just as local structures are important on the one hand, it is the European structures, on the other hand, which are of relevance on the supranational level. The knowledge of civil servants should thus also include new requirements emerging as a result of the integration of the national state in a modern Europe. It should be noted that it is not only the European integration as such that is in issue here, but also the fulfilment of prerequisites for such an integration.

This involves the crucial elements of democracy and the significance of the law. Another important aspect that should not be overlooked is that the public service must be capable of working efficiently.

One fundamental question concerning the structure of the curriculum is whether legal training should also include an understanding of informal societal rules. Let me use the following metaphor in this context: The teaching of formal rules of law may be compared to a painting in which only black and white or a variety of shades between black and white are used. Such a picture is quite useful when it comes to conveying the structures, albeit seen through a black-grey-and-white filter. If you add all the informal rules of society, what you get is a picture of many colors. Reality, after all, is not characterized by black-and-white images but rather appears as a colorful picture.

The traditional model of the state is marked by a separation of powers. Parliament, government and courts of law are separated from each other. The modern concept of the state, as against that, provides for a system of checks and balances, whereby the relationships among these constitutional institutions may be characterized by conflicts, but also by cooperation and balances. The history of the modern state shows the extent to which a president can come into conflict with the parliament. Nor is the role of the courts to be underestimated in this regard.

constitutional checks and balances



The influence which the political parties exert on the state constitutes one of the characteristic features of modern government. To a certain extent, this influence is also a taboo because it is not raised as an issue in the curriculum. It is the essence of a taboo that it should not be touched upon. And it should not be talk about. It follows logically that one should not lecture about it either. However, a free and liberated society should have no need for public taboos, only for private taboos, which are safeguarded by data protection legislation. The impact of political parties might be such a public taboo, especially in certain situations where political parties influence government decisions or personnel policies.

We are currently not only living in a political party democracy, but also in a mass media democracy. This is a quite obvious situation even though one of the central functions is frequently repressed in a psychoanalytic sense of the word. To give an example, the fact that there has been a change from a democracy characterized by political parties to a mass-media democracy has not been sufficiently discussed in public. It may thus be idealistic to believe that such an issue may be integrated within the framework of a curriculum with a view to designing a new curriculum. But it must be noted that general societal taboos are also to be found in the field of administration, and thus also in the curriculum dealing with that administration.

It is not realistic for a curriculum to attempt to comprise all administrative issues. A curriculum is therefore bound to be incomplete in terms of thematic scope.

There will never be a perfect curriculum. In the interest of a pragmatic approach, it will thus be sufficient for the curriculum to essentially include all the topical issues of administrative teaching.

3.2 CURRICULUM OF LAW IN THE DEPARTMENT OF PUBLIC ADMINISTRATION, UNIVERSITY OF TARTU, ESTONIA

*Taavi Annus**

1. The Present Curriculum

The Department follows the principle of combining theory with practice and giving the students a broad overview of the field.

The curriculum of the Department of Public Administration includes mandatory courses, selective courses (students have to select a course from a pre-determined list) and “free” courses (students have absolute freedom).

Among the mandatory courses, there are two courses on law. These are administrative law and procedure (officially called the administrative system of the Republic of Estonia); and constitutional law (the constitutional system of the Republic of Estonia). There is no set time at which a student has to take these courses. They have to be passed at any time during undergraduate studies.

Besides these mandatory courses, among the selective courses is the general principle of civil law. There are no other courses that are directly part of the PA curriculum, but anyone can select legal courses from the faculty of law (the “free” courses)

The topics that are handled within the course of administrative law include:

- definition, tasks and functions of public administration;
- its position in the state according to the theory of separation of powers;
- constitutional principles of public administration;
- legal norms and sources in administrative law;
- organisation of administration;
- administrative acts and contracts;
- administrative procedure;
- control of administration, also the judicial review of the administration;
- present administrative system of Estonia, including the cabinet, ministries, agencies and local self-government;
- principles of civil service.

* Department of Public Administration, University of Tartu, Tartu, Estonia

The course on constitutional law is divided into two parts. The general part discusses the following topics:

- principles of constitutional law;
- constitutional law theory (including the historical perspective);
- principles of society and state;
- theory of constitution;
- rights and duties of the people;
- elections;
- state institutions.

The second part deals with the Estonian constitutional system, including historical aspects and different institutions of the present constitution.

The course of general principles of civil law follows very much the structure of the General Principles of Civil Law Act, adopted in 1994. Therefore, it does not include many areas, including property law, for example. Unfortunately, not very many PA students select this course.

Of course, legal topics are discussed within the ordinary PA classes, as well. Mainly these topics are more or less interdisciplinary, covering the state, the society, the rule of law and even the interpretation of legal norms. Many topics are very “practical” where the practical aspects of civil service system and the relations between different institutions within public sector are dealt with, but the focus is not set on the legal issues.

2. The Reasons For Changing The Curriculum

There are two main reasons why this system needs to be changed. The first one is concerned with the needs of the PA students (internal reasons), the other with the needs of the future civil servants (the external or structural reasons).

2.1 The Internal Reasons For Change

Professors of the faculty of law of Tartu University teach both the administrative law and the constitutional law courses. Moreover, the students of law and students of PA are not treated differently. They attend the same lectures and seminars, have a similar program and take the same examination at the same time.

Although this serves efficiency by not having two almost similar courses running separately for PA and law students, it somewhat decreases the value of the courses. It is obvious that the needs of future lawyers and future civil servants are different.

Also, the level of the students at the beginning of the course is different. The students of law usually take the constitutional law course during the second semester of studies and administrative law during the third semester. By that time, they have acquired considerable skills in law, including a general theory of law. Meanwhile, the PA students have usually not had any legal course and their knowledge about legal principles is poor.

This difference is a big problem both for the professor and the students. The PA students often do not clearly understand the problems brought up, especially in the beginning of the course. This discourages them to participate. The professor, however, has the difficulty of presenting information clearly for the PA students, but not making it too easy for the law students.

These problems could be avoided by introducing an additional course on general legal principles for the students of PA. In future, the introduction of a separate course for PA students and law students may be possible.

2.2 The External Reasons For Change

2.2.1 Underqualification

The legal system of Estonia has changed a lot during the past few years and continues to develop rapidly. This includes both the private and public law spheres. Although the private law reforms, based on the German legal system, have been more successful, even this reform is far from complete. For example, Estonia has not yet adopted a new code on contracts. In the public law sector, the reforms are only in the early stages.

This rapid change is one of the main reasons for the fact that few qualified lawyers who are able to adjust to the new conditions have remained in public service. Although the problem of underqualified staff exists in the whole civil service, it is especially bad concerning lawyers. Private sector practitioners earn many times more than civil servants, whose salaries are determined, relatively strictly, by pay schedules. At the moment, not only good lawyers leave the public sector, but many badly qualified lawyers have remained, therefore PA graduates need to be skeptical about their advice. There are no systematic and thorough programs for in-house training.

The situation is getting better, but graduates of the faculty of law still do not often enter civil service, and many leave soon after receiving experience and practical training. This underqualification of the staff means that graduates

of the PA department, themselves, need to have a solid background in law. It is their leadership that should encourage the whole public sector to develop their skills.

It is my opinion that the department should devote more attention to legal topics than it does at the moment.

2.2.2. The Rule of Law

The fact that Estonia was a member of the Soviet Union, where decisions were based mostly on party policy, not on rule of law, is widely known. After independence, Estonia adopted the principle of rule of law and the courts enforce this principle. Although the civil servants and the society formally accept the principles, the implementation is hindered by several factors, especially the lack of training.

The course of administrative law pays a lot of attention to the principle of the rule of law. Therefore, there are no problems in the curriculum itself. However, the problem with civil servants today is that this principle is often misunderstood and over emphasised. Often there is allowed too little flexibility. The rule of law principle is sometimes turned into a dogma, allowing no room for administrative discretion. Severe over-regulation and inefficient bureaucracy mostly illustrate this. The principle of rule of law is sometimes applied to the extreme.

One of the reasons for this is the lack of theory and practice concerning the discretion of public administration. Unfortunately, the administrative law course does not include a topic on the application of discretion in public administration. The principles, like proportionality, reasonability and equality, are not known to most of the people. Therefore, regulations that allow for discretionary decisions are not preferred. PA students need to be educated to search for the optimal proportion of regulation and discretion, to ensure both efficiency and the rule of law.

2.2.3. The Financial Questions

The present content of administrative law does not include elements of budgeting and taxation. This is understandable for the lawyers, as there is a separate course on financial law in the curriculum of the faculty of law. At the same time, the PA students need to get at least some information about the budget law principles, because the efficiency, legality and regularity of budget implementation is one of the tasks civil servants face. The State Audit Office is constantly facing infringements of financial regulations

within the civil service, often not due to the abuse of office, but simple lack of skills. This again calls for differentiation between administrative law for lawyers and administrative law for PA.

2.2.4. The Responsibility Of The Civil Servants

Another result of the loss of party control is diminishing responsibility. Unfortunately, there is no elaborated theory on the civil responsibility of the administration and civil servants in Estonia. This is not one of the topics of the administrative law course, although it should be. Laws do not regulate this matter and, therefore, the civil servants do not recognise the responsibility they have, or should have, for their acts. PA students should be aware that they are not only accountable to the public in an ethical sense, but they also bear legal (criminal, disciplinary, and also civil) responsibility for their illegal acts. In a few years, when the students take office and start making decisions, the laws, political culture and the experience of enforcement officials, will have developed enough to actually impose responsibility.

2.2.5. European Union Integration

Estonia is applying for membership to the European Union. This is one of the main areas of improvement considering the training of civil servants. In its opinion, concerning Estonia's application for membership, the Commission repeatedly expresses its doubts on the capacity and qualification of the administration to apply the *acquis*.

The overview of the European institutions and its policies is given to PA students during the European Union course (which is on a selective course). However, there is no course on EU law (this area is not covered in any of the mandatory law courses, either). The graduates of the Department will be the key people in the possible accession process, therefore, they should be well qualified in EU law.

2.2.6. Private Law

Besides the enforcement of the rule of law, and other principles guaranteeing the democratic state as defined in the Estonian constitution, public administration throughout the world is facing a tremendous task of enhancing its efficiency. The Estonian government has recognized this need and one of its priorities is to develop a state that performs well.

One of the results of this striving for efficiency has been the wide application of private law structures. More and more government functions

are performed by quasi non-governmental organisations, or pushed completely to the private sector, using contracting-out principles.

This decentralisation may not be possible without knowledgeable and skillful civil servants who can plan, draft, negotiate, and sign the contracts for performing public duties. It is not enough that the lawyers are present during this process, the decision makers also need to possess good skills in the principles of private law, generally, and contract and property law, specifically.

The principles of civil law have undergone as radical a change as public law. Estonia has adopted the German private law tradition, but the recognition of the new private law principles has not been easy. In this area, the present civil servants lag behind as much as those in public law areas, or even more, because they do not recognise the need for acquiring skills in private law.

The curriculum has one elective course on the general principles of civil law. This may be too little, especially considering the fact that few students take the course.

2.2.7. Legal Argumentation Skills

There is one more topic that can be considered a legal one. Lawyers need to have the practical skills of oral (legal) argumentation and drafting of (legal) documents, which means legal argumentation. Civil servants also have constant contact, both with the private and the public sector. For example, budgeting negotiations involves a lot of bargaining. Draft legal acts have to be approved by several ministries, the civil servants of which need the skills to present their arguments on their propositions. The contracting-out of public duties has already been discussed.

It is probably not useful that these overly practical elements of everyday PA work are included in the university curriculum. However, they need to be kept in mind when teaching the courses. Also, the Department should encourage the students to participate in activities that develop argumentation skills.

3. Conclusion

The present curriculum deals with most areas that civil servants have to deal with. However, there are some problem areas where improvements can be made. The question whether the PA department needs to have

courses of law, separate from the faculty of law, is controversial and meets practical difficulties. Some improvements can be made, even without this differentiation, by including additional topics to the present curriculum.

3.3 CURRICULUM OF ADMINISTRATIVE LAW TEACHING AT SCHOOL OF PUBLIC ADMINISTRATION, ŁODZ, POLAND

*Zofia Duniewska**

Preparation

The School of Public Administration (SPA) in Łódź operates on the basis of the Ministry of Education's decision issued on the 29th May 1995. It was founded by the Foundation in Support of Local Democracy of Warsaw. The School is to continue and develop the educational mission started by the Postgraduate School of Local Government and Administration founded in 1990 by the FSLD.

The establishing of the School coincided with the system and legal changes in Poland. As a natural consequence, the teaching programme of Administrative Law was prepared on the basis of new law regulations, new expectations and new needs.

According to the legislation (now primarily The Schools of Higher Education Act of 9th May, 1997) and to SPA's Statute (approved by the founder, and then analysed and accepted by the Minister of National Education), the Senate is the body responsible for the preparation and changes of the programme. The syllabus was accepted by the Minister of National Education and then favourably assessed by three reviewers appointed by the FSLD. The acceptance of the programme by the Minister provided the condition for the establishment of the school. Later, amendments in the programme were introduced by the school itself. These were based on the opinion which was received from the Ministry of National Education in answer to a request from the school.

Aims

Administrative Law is one of the fundamental disciplines of law, especially in schools of public administration. Nowadays, it is difficult to imagine a duly functioning law-observing state without the existence and observance of such a law. Consequently, this is connected with the absolute necessity to study law thoroughly.

* School of Public Administration, Łódź, Poland

A knowledge of Administrative Law cannot be identified with the knowledge of the text of the rules included into a formal framework of statutory clauses. The teaching process should not concentrate on spreading the information resolving itself to simple mnemonics, learning the letter of the law (even in the system of Statutory Law), although it is certainly indispensable to apply that method in numerous cases. A knowledge of Administrative Law must be mainly the knowledge of fundamental institutions and rules governing that law. Administrative Law doctrine is very important as well. Although the doctrine of Administrative Law does not have such long traditions – as, for example, Civil Law – it has created lots of theories which should be studied in order to formulate, apply and observe the rules of Administrative Law. Apart from a knowledge of Administrative Law it must be placed in real life situations. The teaching syllabus should comprise issues included into the so-called general part and the specific part of Administrative Law.

Subject Range

Public administration specialty

Teaching courses in the third and fourth semesters of the second year of studies include three different forms, namely: lectures, practical classes and practical simulation classes. All the courses have been intended to comprise a total of 165 hours: 120 hours of structural and substantive law (60 hours in each semester) and 45 hours of procedural Administrative Law (in the fourth semester).

Detailed syllabus for the third semester

Structural Administrative Law

I. Genesis, Development, Definition and Characteristics of Administrative Law

(6 hours)

1. Origins of Administrative Law and its evolution.
2. Definition and scope (Constitutional background) of Administrative Law.
3. Characteristics of Administrative Law – public and private law.
4. Interior division of Administrative Law.
5. Administrative Law and other disciplines of law – the matter of a “borderline”.

II. Notion, Features and Classification of Administration

(6 hours)

1. General notion of administration (subject and object approach) and its features.
2. The nature and classification of administration.
3. Definition and subject of public administration.
4. The range of administrative activity – private properties of administrative tasks.
5. Current role of public administration in Poland and in other selected countries.
6. Administrator as a manager and executor.

III. System of Administrative Law and Its Sources

(10 hours)

1. Notion of the Polish system of law and its characteristics.
2. Diversity of the legal system: a “closed system” (Civil Law), an “open system” and a mixed system.
3. Sources of Administrative Law: notion, features and classification.
4. The rule of law – general rules of Administrative Law.
5. Characteristics of particular sources of the Polish Administrative Law (common and internal binding force of the law).
6. Significance of a doctrine, custom and jurisdiction in the system of Administrative Law.
7. Sources of information about the law (publication, *vacatio legis*...).
8. The matter of interpretation of administrative legal acts.

IV. Europeanisation of Administrative Law

(2 hours)

1. Notion, reasons and purpose of Europeanisation of Administrative Law.
2. Polish administrative law in relation to European integration.
3. Problem of the international notion of Administrative Law.

V. Relation and situation under Administrative Law

(6 hours)

1. Notion and characteristics of relation under Administrative Law.
2. Classification, establishment, change and cessation of relation under Administrative Law.

3. Definition and characteristic features of situations under Administrative Law.
4. General characteristics of administrative legal status of the citizen.
5. Public individual right, public and individual interest, duty imposed by Public Law.
6. Public power exercise – sanction under Administrative Law

VI. Legal Methods and Forms of Administrative Activity

(10 hours)

1. The nature and sources of administrative powers – *action ultra vires*.
2. Notion and characteristics of method of administrative activity.
3. Definition and classification of legal forms of administrative activity.
4. Characteristics of particular forms of administrative activity.
5. Administrative approval (recognition) and other margin of decision.
6. Issues of administrative responsibility.

VII. Notion and Kinds of Administratives Bodies

(4 hours)

1. Notions of an administrative body.
2. Types of bodies and their general characteristics.
3. Relation between a type of a body and its tasks.

VIII. Connections between Subjects Performance and Tasks of Public Administration

(4 hours)

1. Concentration and deconcentration – centralisation and decentralisation.
2. Managing, supervisory, control and coordination's bonds.
3. Cooperation between subjects.

IX. Head and Central Administrative Bodies

(4 hours)

1. Short characteristics (with reference to Constitutional Law) of head and central bodies.
2. Significance of head and central bodies in the system of public administration.

X. Territorial Division

(4 hours)

1. Notion, kinds and factors determining territorial division.
2. Basic territorial division.
3. Auxiliary and special territorial divisions.

Detailed syllabus for the fourth semester

Structural, substantive and procedural Administrative Law

Structural and substantive Administrative Law

I. Territorial Bodies of Government Administration

(10 hours)

1. Territorial bodies of government administration in a dual model of local administration.
2. Characteristics of territorial bodies of general government administration.
3. Tasks and competence.
4. Legal status of a chief provincial official (voivode).
5. Legal status of a head of district.
6. Auxiliary machinery of territorial government's administration bodies.
7. Territorial bodies of special government administration.
8. Connection within territorial government administration and bonds linking the administration with other subjects.
9. Specific relations between territorial government and self-governing administration.

II. Local self – government

(10 hours)

1. The essence and theories of a local self-government.
2. Origins and evolution of a local self-government.
3. Notion and characteristic features of a commune.
4. Auxiliary units and other organisational commune units.
5. Range of activity and tasks (own and commissioned) of a local self-government.
6. Authorities and administrative machine of the commune.
7. The legal status of a councilor.
8. Extra-commune community subjects (regional council with the appellate body; communal unions, associations of communes).

9. Connections between a commune and government administration and other subjects – supervision over the self -government activity and control powers of the Supreme Administrative Court.

III. Control of Administration

(6 hours)

1. Notion, range and classification of control.
2. Structure of the public administration control system.
3. Exterior control of public administration (Parliamentary control, Constitutional Tribunal, Supreme Chamber of Control, Ombudsman, prosecuting control, judicial review, social control).
4. Interior control of public administration.

IV. Selected Issues of Mainly Substantial Administrative Law

(34 hours)

1. Personal law of the citizen.
2. Commencing and conducting business activity.
3. Legal situation of real estate and movable owner.
4. Issues of health care and social welfare.
5. Culture and education.
6. Social pathological cases (alcoholism, drug and nicotine addiction) in the light of Administrative Law.
7. Legal system of social organisation.
8. Legal status of a foreigner.

Procedural Law

- I. Concept, features and sources of Administrative Law proceedings
- II. Carriers of rights and the subject matter of administrative proceedings
- III. General principles of administrative proceedings
- IV. Course of administrative proceedings
- V. Judicial decision in an individual case in administrative proceedings
- VI. Verification of decisions and provisions in due course of instances
- VII. Extraordinary administrative proceedings (instituting a proceedings de novo, ascertainment of invalidity, reversal and change of a decision)
- VIII. Judicial-administrative proceedings
- IX. Administrative executive proceedings

Business specialty

In this specialisation the syllabus covers an analogical subject range (with certain modifications of specialisation subjects) within a limited time.

In addition, the school educational programme includes other lectures closely related to Administrative Law (or being a part of this law), separated because of their specific character and the importance of problems, such as: public finances of the State and territorial self-government; policy of urban and communal development; land use management; civil service law – ethics in administration; management of civil service; and responsibility of public administration.

Changes

As it has already been mentioned the School was founded in 1995 (and is continuing the mission started by the FSLD's School in 1990), so the curriculum is rather up-to-date. The syllabus has been currently modified according to requirements. Due to the Ministry of Education's opinion the Senate is entirely authorised to introduce any necessary amendments to the curricula required by the new legal status, or for other significant needs. Such changes should not affect the whole curricula, its layout and main subjects. The Senate is authorize to extend some courses rather than make reductions.

In order to introduce any changes to the curricula, to one subject, or a group of lectures from the same field, the Rector calls teachers (usually twice a year or as needed) to hear their opinion of the programme. If there are any new suggestions then a meeting of all lecturers teaching in the same field is called to discuss possible changes. If a teacher is interested in implementing some small changes to the programme it is enough to inform or negotiate such a possibility with the Rector.

Improvement to the programme may also be achieved due to the Rector's analysis of the process of curricula. This procedure indicates spheres where some issues are duplicated, overlooked, are out of date or should be introduced in different intervals.

SPA's students (a number of students of extra-mural studies are administrative workers) are encouraged to express their opinion on the programme as well. After receiving any claims or suggestions the Rector discusses such issues with the teacher concerned. This further procedure is similar to changes proposed by lecturers.

An efficient way for the improvement of the programme is based also on frequent meetings with experts and practitioners outside of the School, including the Union of Polish Towns. Such professionals sometimes represent different perspectives and attitudes to issues which are subject to the SPA's curricula. Their opinion gives impulse to modifications in the programme.

List of literature used for teaching Administrative Law in the School of Public Administration Łódź

Including:

Adamiak B., Borkowski J., *Polish procedural Administrative Law and judicial – Administrative Law*, Warsaw 1992

Ahlt M., *European Law*, Warsaw 1995

Administrative Law, collective, editor J.Boć, Wrocław 1997

Administrative-Legal Task and Competence of Communes, editor M. Stahl, Warsaw 1994

Boć J., Chajbowicz A., Kowalczyk B., Lisowski P., Szadok-Bratun A., *Administrative Law – Practice, Study work*, Wrocław 1995

Cieślak Z., Jagielski J., Lang J., Wierzbowski M., Wiktorowska A., *Administrative Law*, Warsaw 1996

Filipek J., *Administrative Law – general institutions*, Krakow 1995

Introduction to Administrative Law, collective, editor M. Stahl, Warsaw 1991

Lasok D., *European Community Law in outline*, Torun 1995

Leoński Z., *Substantive Administrative Law*, Warsaw 1997

Ochendowski E., *Administrative Law – general part*, Torun 1995

Schwarze J., *European Administrative Law*, Luxembourg 1992

Szreniawski J., *Administrative Law – general part*, Lublin 1994

Recommended for students (mostly):

Adamiak B., Borkowski J., *Polish procedural Administrative Law and judicial – Administrative Law*, Warsaw 1992

Boć J., Chajbowicz A., Kowalczyk B., Lisowski P., Szadok-Bratun A., *Administrative Law – Practice, Study work*, Wrocław 1995

Administrative Law, collective, editor J.Boć, Wrocław 1997

Leonski Z., *Substantive Administrative Law*, Warsaw 1997

3.4 CURRICULUM OF PUBLIC LAW TEACHING AT ACADEMY OF PUBLIC ADMINISTRATION, KIEV, UKRAINE

*Bernhard Schloer**

PA 2 LAW AND LEGISLATIVE PROCESS

Course objectives:

- 1/ be familiar with the major public-legislative institutions and their place and role in the administration of the social processes;
- 2/ be familiar with the major juridical categories and branches of law in Ukraine;
- 3/ develop ability to orientate oneself in the legislative system of Ukraine, skills in using legal acts;
- 4/ develop an appropriate legal culture and legal reasoning of the students.

CORE MODULE

CM 1

Module title: **Constitutional Law of Ukraine and Other Countries**

Module Convenors: Ihor Hrytsiak/Volodymyr Shapoval

Prerequisites: No Prerequisites.

Study requirement: Taught hours 32 (lectures and seminars)
Directed private study 8

Module objectives:

- 1/ understand the place and role of the major constitutional-legislative institutions in the formation of effective public administration system in Ukraine and other countries;
- 2/ study main sources of constitutional law of Ukraine;
- 3/ develop ability to independently analyse and evaluate various models of the organisation of public administration in Ukraine and foreign countries.

Module assessment: Writing of an essay.

* Ukrainian Academy of Public Administration, Kiev, Ukraine

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Session 1.

2

General characteristic of constitutional law of Ukraine and foreign countries.

Concepts: subject, system and sources of constitutional law of Ukraine and foreign countries. The place of constitutional law in the public legal system. Modern constitutional theories.

Session 2.

4

The constitutional-legislative status of the individual and citizen.

Rights, freedoms and duties of the individual and citizen; their classification. Restrictions and guarantees of rights and duties. Citizenship status and regime of foreigners. Individual rights, freedoms and duties. Political rights, freedoms and duties. Economic rights, freedoms and duties.

Session 3.

4

The constitutional-legislative status of political institutions.

The state. The concept of the state as a constitutional-legislative institution. Ukraine as a sovereign and independent, democratic state based on rule of law and social consensus. Constitutional principles of public organisation. Political parties and party systems. Non-governmental voluntary organisations. Religious communities and churches.

Session 4.

4

The constitutional-legislative principles of direct and indirect democracy.

Referendums and their types. Other means of direct democracy. Election as a means of indirect democracy. Electoral systems and their peculiarities.

Session 5. 4

The form of state as a category of comparative constitutional law.

Conceptual principles and forms of public administration systems. Conceptual principles and forms of territorial organisation. The decentralised unitary state. Ukraine as a unitary state.

Session 6. 4

The legislative branch of government: Parliament.

Parliamentarism. The place and role of parliaments in public life in Ukraine and abroad. Structure, organisation and powers of parliaments in Ukraine and abroad. The legislative process. Other (non-legislative) powers of parliaments.

Session 7. 4

Executive power: government and head of the government.

The concept of executive power and its subjects. Structure and procedure of the formation of governments. Interaction between government and parliament. The place and role of the head of the state in the structure of the executive power. Juridical forms of the head of the state. The President of Ukraine: legislative status, competence and responsibility.

Session 8. 4

The constitutional-legislative principles of formation and functioning of judicial power.

General characteristics of judicial power. Constitutional control (supervision) and constitutional justice. The Constitutional Court of Ukraine: legislative status, functions and tasks.

General characteristics of regional governments and local councils in Ukraine and abroad.

Central government and municipal councils: forms of control and interaction.

Recommended literature:

Constitution /Basic Law/ of Ukraine, adopted by Verkhovna Rada (Parliament) of Ukraine on 28 June 1996. Holos Ukrainy, 13.06.96.

Declaration of Sovereignty of Ukraine. Issued by the Ukrainian Parliament on 16 July 1990. Vidomosti VR UkrRSR, N 31, 31.07.90.

“Resolution on the Declaration of Independence of Ukraine”. Resolution of Verkhovna Rada (Parliament) of UkrRSR of 24 August 1991. Vidomosti VR Ukrainy. 1991, N 38, (i.502).

“Concerning Religious Liberty and Religious Organisations”. Vidomosti VR UkrRSR. 1991, N 25, (i.283); Vidomosti VR Ukrainy. 1994, N 13, (i.66).

“Concerning the Legislative Inheritance of Ukraine”. Vidomosti VR Ukrainy. 1991, N 46, (i.617).

“Concerning Ukrainian Citizenship”. Vidomosti VR Ukrainy. 1991, N 50, p.701; 1993, N 14, (i.121); 1994, N 33, (i.299); N 43, (i.390).

“Concerning Judicial System of Ukraine”. Vidomosti VR UkrRSR. 1981, appendix N 24, (i.357); Vidomosti VR Ukrainy. 1992, N 35, (i.508); 1994, N 26, (i.204).

“Concerning Court of Arbitration”. Vidomosti VR Ukrainy. 1991, N 36, (i.469).

“Concerning the Constitutional Court of Ukraine”. Holos Ukrainy. October 22, 1996.

“Concerning State Borders”. Vidomosti VR Ukrainy. 1992, N 2, (i.5).

“Concerning Citizens’ Unions”. Vidomosti VR Ukrainy. 1992, N 34, (i.504).

“Concerning Local Councils and Local and Regional Governments”. Vidomosti VR Ukrayini. 1992, N 28, (i.387); N 31, (i.438); N 33, (i.475-476); 1993, N 19, (i.199); 1995, N 22, (i.171).

“Concerning the Printed Mass Media in Ukraine”. Vidomosti VR Ukrayini. 1993, N 1, (i.1).

“Concerning the Status of the People’s Deputy in Ukraine”. Vidomosti VR Ukrayini. 1993, N 3, (i.17); 1994, N 34, (i.315); N 40, (i.363).

“Concerning the Representative of the President of Ukraine in the Autonomous Republic of Crimea”. Vidomosti VR Ukrayini. 1993, N 9, (i.58).

“Concerning the Procedure of Getting the Consent of the People’s Deputies Council to Bring Deputy to Trial”. Vidomosti VR Ukrayini. 1993, N 21, (i.220).

“Concerning the Election of the People’s Deputies of Ukraine”. Vidomosti VR Ukrayini. 1993, N 48, (i.455); 1995, N 31, (i.241, 245); 1996, N 13, (i.63).

“Concerning the Election of the Deputies and Heads of the Village, Settlement, District and Region Councils”. Vidomosti VR Ukrayini. 1994, N 8, (i.38); N 25, (i.200).

“Concerning the Election of the President of Ukraine”. Vidomosti VR Ukrayini. 1994, N 8, (i.40); N 33, (i.298).

“Concerning the Legal Status of Foreigners”. Vidomosti VR Ukrayini. 1994, N 35, (i.161).

“Concerning the Status of Deputies of Local Councils”. Vidomosti VR Ukrayini. 1994, N 24, (i.180); 1995, N 1, (i.4); N 35, (i.270).

“Concerning the Autonomous Republic of Crimea”. Vidomosti VR Ukrayini. 1995, N 41, (i.299).

“Concerning the Recall of the People’s Deputy of Ukraine”. Vidomosti VR Ukrayini. 1995, N 41, (i.299).

“Concerning the Constitution of the Autonomous Republic of Crimea”. Vidomosti VR Ukrayini. 1996, N 41, (i.90).

Melashchenko, V.F. Osnovy konstytutsiinoho prava Ukrayini: Kurs lektsiy dlya studentiv iurydychnykh vusiv i fakultetiv. Kyiv, Venturi, 1995, 240 p. Shapoval, V.M. Zarubizhnyi parlamentaryzm. Kyiv, 1993.

Shapoval, V.M. Vyshchy orhany suchasnoi derzhavy. Poryivialnyi analiz. Kyiv, 1995.

Shapoval, V.M. Vykonavcha vlada uv rozvynutykh kraiinakh (konstitutsiino-pravovyi aspekt): Navchalnyi posibnyk. Kyiv, 1996.

CM 2

Module title: **Administrative Law**

Module Convenor: Vasyl Bordeniuk

Prerequisites: No Prerequisites

Study requirement: Taught hours 24 (lectures and seminars)
Directed private study 6

Module objectives:

- 1/ be familiar with the major concepts and terms of administrative law;
- 2/ study peculiarities of the mechanism of administrative-legislative regulation;
- 3/ be familiar with the major sources of administrative law;
- 4/ develop ability to analyse normative acts and use them in professional activity.

Module assessment: Written test.

Lectures	Seminars
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20	4
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2	
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Session 1.

General characteristic and types of public administration.

Concepts, subject, system, and origins and sources of administrative law of Ukraine. The place of administrative law in the public legislative system. Administrative-judicial relations and their types.

Session 2.

Executive bodies as subjects of public-administrative relations.

Concepts and characteristics. Classification of state bodies under executive power. System of state bodies under executive power in Ukraine.

Session 3.

The citizens of Ukraine as the customers of administrative-legislative relations.

2	
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Administrative-legislative status of the citizens of Ukraine. Administrative competence and capability. Administrative-legislative status of the foreigners and people without citizenship.

Session 4. 2

Non-governmental organisations as the subjects of administrative-legislative relations.

Voluntary organisations and their types. Legalisation of voluntary organisations. Responsibility for the violation of the legislation concerning voluntary organisations.

Session 5. 2

Work in governmental and non-governmental organisations.

Concept of professional service. Types of civil servants. Position and ways of filling the office. Juridical responsibility of civil servants.

Session 6. 2 2

Forms of administrative activity.

Concepts and types. Legal and non-legal forms of public administration. Legal acts of public administration: concepts, characteristic and classification.

Session 7. 2

Methods of public administration.

Concepts and types. Administrative and economic methods. Persuasion and obligation. Types of administrative obligations.

Session 8. 2

Responsibility for administrative violations.

Concepts and characteristic. Concept of administrative violation and its characteristic. Types of administrative penalties. System of administrative jurisdiction.

Session 9. 2

Administrative process.

Concept of administrative code of practice, administrative conduct of a case and administrative procedure. Structure of administrative conduct of a case and its types. General characteristic of some types of conduct of a case.

Session 10.

2

Legality and discipline in the sphere of the executive power.

Aim and task of control (supervision) as an organic part of administration. Forms of control and supervision and their peculiarities.

Recommended literature:

Code of Ukraine Concerning Administrative Violations. Pravo Ukrainy. 1995; N 3, June, 1996; Holos Ukrainy. 13.07.96.

“Concerning the Procedure of Administrative Penalising (Fines)”. Vidomosti VR Ukrayini. 1992, N 35, (I.510); Vidomosti VR Ukrainy. 1995, N 8, (I.53).

“Concerning the Militia”. Vidomosti VR Ukrainy. 1991, N 4, (I.20), /with amendments and supplements/.

“Concerning Ukrainian Citizenship”. Vidomosti VR Ukrainy. 1991, N 50, (I.701).

“Concerning the Public Prosecutor’s Office”. Vidomosti VR Ukrainy. 1991, N 53, (i.793).

“Concerning Religious Liberty and Religious Organisations”. Vidomosti VR Ukrainy. 1991, N 25, (I.283).

“Concerning Free Enterprise”. Vidomosti VR Ukrainy. 1991, N 14, (I.168).

“Concerning Voluntary Organisations”. Vidomosti VR Ukrainy. 1992, N 34, (I.504).

“Concerning Public Service”. Vidomosti VR Ukrainy. 1993, N 52, (I.490).

Breban, G. Frantsuzskoye administrativnoye pravo. Moscow, 1988.

Drago, R. Administrativnaia nauka. Moscow, 1982.

Vedel, Zh. Administrativnoie pravo Frantsii. Moscow, 1973.

Bernan Gurne. Derzhavne upravlinnia. Kyiv, 1993.

Glen Wright. Derzhavne upravlinnia. Kyiv, 1994.

Koval, L.V. Administratyvne pravo: Kurs leksii. Kyiv, 1996.

3.5 CURRICULUM OF PUBLIC LAW COURSES AT DEPARTMENT OF GENERAL LAW, UNIVERSITY OF LATVIA, RIGA, LATVIA*

*Anita Ušacka***

Lectures – 44 hours

Seminars – 20 hours

I General questions

The fundamental questions on history of the law and its development in Latvia

The law up to 1918

The law during the period of an independent Latvia – from 1918 to 1940

The law during the period of occupation – from 1940 to 1990

The law after the revival of independence in 1990. The reform of the legal system. The state governed by the rule of law.

Latvia as a civil law system country

The world's legal systems

Legal norms (definition, characteristics, structure, classification, interpretation, analogy)

Normative acts of the Republic of Latvia (types, procedure of passing, promulgation, becoming effective and valid). The legislative process. Systematization of normative acts. Codes.

Branches of the law. Public and Private Law

Legal relations (definition, types, subjects, contents)

Offence and liability (definition, types, legal regulation)

Public law as a part of the law

The idea of dividing the law into public and private and its development

Subject and structure of Public Law

The regulation method of Public Law

Subjects of Public Law

The public interest. The legal authority

The legal systems and its stability

* 64 hours per course for Public Administration Master degree first year students

** University of Latvia, Riga, Latvia

II The branches of Public Law

Constitutional Law

Definition and sources of Constitutional Law

Satversme (Constitution) of 1922 – the basic law (its passing, historical contents, restitution, development)

The basic principles of the Constitution (sovereignty, separation of powers, the binding force of the law, etc.)

Rights, freedoms and obligations of a person and a citizen (citizenship, status of aliens, restrictions of rights and freedoms)

Legislative power, executive power and judicial power. The State Audit Office

Administrative Law

Definition, subjects, sources

Institutions of the executive power (definition, types, legal status)

Regulation of the civil service

Normative administrative and administrative individual acts and their adoption

Administrative liability

Administrative process

Labour and Social Law

Definition and sources

Individual employment contract

The basic questions of employment relations (the daily and weekly working time, annual holidays, paid vacation, occupation safety, labour disputes, and employer and employee liability)

Social security. Employment pensions

Environmental Law

Definition and sources

Environmental protection policy and its realisation and administration

Criminal Law

Definition and sources

Crime (definition, types and elements)

Punishment (definition, criminal sanctions)

Criminal Procedural Law
Definition, sources and principles
Pre-trial preliminary investigation
The role of the prosecutor
The role of the advocate
Judicial hearing
Civil Procedure
Definition and its legal regulation
Jurisdiction of the court
Parties of litigation
The essence of the suit
Stages of proceedings
Public Law in Other Countries (compared with Latvia)
The law of economic administration in Germany
Anti-monopoly Law
Protection of Consumers' Rights

List of Literature

Theme 5. Administrative Law.

- P.Cane. *An Introduction to Administrative Law*. 1992, Clarendon Press, Oxford.
- K.Culp Davis. *Discretionary Justice. A preliminary inquiry*. 1992, Clarendon Press, Oxford.
- Introduction to *Dutch Law*. Second revised edition. 1993
- H.B.Jacobini. *An Introduction to Comparative Administrative Law*. 1991, Oceana Publications, Inc.
- L.Neville Brown Obe, J.S.Bell. *French Administrative Law*. 1993, Clarendon Press, Oxford
- Nigel G.Foster. *German Law and Legal System*. Blackstone Press Ltd.
- J.Schwarze. *European Administrative Law*. 1992, Sweet & Maxwell.
- K.F.Warren. *Administrative Law. In the American political system*. West Publishing Company.
- Didlers K. Ievads administratīvo tiesību zinātnē. R., 1938.

3.6 COMMENTS ON CURRICULUM CHANGES OF PUBLIC ADMINISTRATION STUDIES AT THE SCHOOL OF HUMANITIES AND NATURAL SCIENCE – STUDIUM GENERALE SANDOMIRIENSE IN SANDOMIERZ

*Marek Stefaniuk**

Both the Act of Law of 12th September 1990, concerning higher education¹ and the Act of Law of 26th June 1997 concerning higher professional education² sanction in Poland three types of higher education schools: state universities, non-state universities, and higher professional schools. Before 28th of August 1997 public administration studies had been available in the foregoing first two types of schools. Some universities that have law departments (or departments of law and administration law), also provided public administration studies that were included in the curriculum in the 1970's. Besides which, public administration studies are available in more than a dozen non-state universities.

The majority of non-state universities offer to their students a three-year public administration programme, where graduates receive a degree of technical license. Experience proves that the degree of technical license (Bachelor degree) usually does not satisfy the needs of a non-state university graduate. According to the present conviction, which has been widely recognised in the last few dozen years in Poland, a "fully valuable" higher educational degree is synonymous with a master's degree. This is the reason why students and the three-year-programme graduates look for opportunities to take up supplementary studies and obtain a Master's degree.

It is worth mentioning that in order to have the concession to educate students under the Master's degree scheme, a non-state school has to meet numerous and precise expectations (concerning personnel, lecturers fully and permanently employed at a school)³. Higher non-state schools

* Center for Self-Government and Administration, Lublin, Poland

1 Dz.U. No 65 item 365 with subsequent changes

2 Dz.U. No 96 item 590

3 Resolution of the Council of Higher Education from 28th November 1991 on determining the conditions that a school has to meet in order to have a concession to run particular studies (Dz.Urz.Min. EN No. 8 item 41 and from 1992 No. 1, item 7.

(particularly the ones established recently) are often not able to meet these conditions. In view of this situation, numerous law departments at state universities have taken decisions to establish supplementary studies for three-year-license programmes, for graduates who are interested in obtaining a Master's degree.

The High School of Humanities and Natural Science in Sandomierz was registered by the Minister of National Education in December 1995. The school opened three faculties: the Faculty of Humanities, the Faculty of Natural Science, and the Faculty of Law and Economics. There are 520 individuals studying administration law at the Faculty of Law and Economics. The curriculum, created in its original version in 1995 (Appendix no.1), particularly focused on the administration of law classes. Its characteristic feature was the presentation (in the form of a few specific types of classes) of traditional topic contents lectured within the scope of administrative law classes. A consequence of this was that substantially more hours could be spent on teaching these contents. At the same time, the curriculum for the remaining classes was transformed in such a way as to educate future administration officers. The curriculum also included some elements of practical and technical skills, such as the processing of official documents.

In May 1997, the Council of the Faculty of Law and Administration at Maria Curie Skłodowska University (UMCS) in Lublin (the closest state university to Sandomierz) took the decision to establish three-year license public administration programme. Simultaneously, a decision over the curriculum for such studies was taken. It transpired that this curriculum could become the model curriculum for public administration studies, for at least non-state universities; the students of which perceive UMCS as an attractive place to take supplementary studies. In other words, each non-state university in south-east Poland which cannot provide its students with a Master's degree, and desires to create for its students the possibility of acquiring such a degree, may be interested in a curriculum that would correspond with the one that is being exercised at UMCS. The purpose would be the protection of students against the obligation to take supplementary exams when in need of supplementary studies.

In September 1997, such a decision was taken in the High School of Humanities and Natural Science in Sandomierz. The curriculum since that time has been considerably changed. The new curriculum for public administration studies at the High School of Humanities and Natural Science (Appendix no.2) fully corresponds with the standards that are binding for

license (Bachelor degree) studies at the Faculty of Law and Administration at UMCS in Lublin. As is common in such situations, the change of curriculum provided the opportunity to ask questions, to discuss and to comment upon it with others. This includes (at license studies) the character of student education, materials and their assignments to particular classes, the optimal number of class hours, and the proper sequencing of planned classes in the entire curriculum. However, it seems that the new curriculum does not create an efficient foundation for answering questions, which in my view concerns the basic problem: What should be the essence of a curriculum in public administration studies (Bachelor degree): professional education and the training of students to work as public administration officers, or training for future supplementary studies for a Master's degree or perhaps some other alternative?

**SCHOOL OF HUMANITIES AND NATURAL SCIENCES STUDIUM
GENERALE SANDOMIRIENSE SANDOMIERZ, POLAND**

CURRICULUM

DIRECTION OF STUDIES: PUBLIC ADMINISTRATION

3-year studies

FIRST YEAR

FIRST SEMESTER

- | | |
|--|------------------|
| 1. Introduction to legal sciences | (30+30) exm |
| 2. Constitutional Law | (30+30) exm |
| 3. Theory of organisation | (30+15) exm |
| 4. Principles of administrative legislation | 30 exm |
| 5. History of administration | 30+15 exm |

SECOND SEMESTER

- | | |
|---|------------------|
| 1. <i>Administrative science</i> | <i>30 exm</i> |
| 2. Administrative Law – introductory issues: theory of Administrative Law, sources of law (fontes iuris oriundi, fontes iuris cognoscendi) | 30+15 exm |
| 3. Governmental administration in Poland | 30 |
| 4. Polish Self-Government Law | 30+15 |
| 5. <i>Comparative Law</i> | <i>30</i> |
| 6. 20 th Century political and economic history | 30 |

SECOND YEAR

THIRD SEMESTER

1. Forms of administrative activity	30
2. Administrative Law – particular part	30+15 exm
3. Civil Law – general part	30+15 exm
4. System of legal protection organs	30
5. <i>Associations and Foundations Law</i>	30
6. Administrative policy	30

FOURTH SEMESTER

1. Civil Law. Property Law	30+15 exm
2. <i>Agricultural Law. Estate property management</i>	45 exm
3. Administrative procedure	30+30 exm
4. Public housing control	15
5. Control over public administration	30
6. <i>Techniques of preparation of administrative acts and official documents</i>	30

THIRD YEAR

FIFTH SEMESTER

1. Selected issues of obligations and Commercial Law	45+15 exm
2. Public Business Law	30+30 exm
3. Petty Offences Law and Tax Penal Law	30
4. Executive procedure in administration	15
5. Diploma seminar	

SIXTH SEMESTER

1. Civil Service Law and elements of professional ethics	30 exm
2. Public finance Law	30 exm
3. <i>Environmental Law</i>	30 exm
4. Diploma seminar	45

In addition, every student is obliged to participate in foreign language courses (150 hours) and in computer classes (60 hours) as well as in classes of philosophy or sociology (60 hours).

Explanations of fonts differentiation used above:

aaaaaaaa core administrative courses

aaaaaaaa additional administrative courses

aaaaaaaa remaining courses

Appendix 2

SCHOOL OF HUMANITIES AND NATURAL SCIENCES STUDIUM GENERALE SANDOMIRIENSE, SANDOMIERZ, POLAND

CURRICULUM

DIRECTION OF STUDIES: PUBLIC ADMINISTRATION

3-year studies

(draft)

Course (lectures+exercises)	number of hours	
	winter	summer

First year

1. Methodology of student's work	15	
2. Basic economy	30	10 rec.,note
3. Statistics	20 +10 rec., note	
4. Introduction to legal sciences	30 + 30 exm	
5. Introduction to philosophy	30 rec., note	
6. Theory of organisation	30 + 15 exm	
7. History of administration	30 exm	
8. Constitutional law	30 + 30 exm	

Second year

1. Administrative Law	30	30+ 15 exm
2. Civil and Family Law	15	30 +15 exm
3. Public Finance Law	15	15 +15 exm
4. Public Business Law	30+15 exm	
5. System of organs of legal protection	30 rec., note	
6. History of law	15+15 rec., note	
7. Administrative procedure	30	15+15 exm
8. Basic Criminal Law	15	15 exm
9. Introduction to legal comparatistics	30 rec., note	
10. Diploma seminar	15	

Third year

1. Labour and Social Insurances Law (including civil service items)	30	15 +15 exm
2. Agricultural Law	30 exm	
3. Commercial Law	30	15+15 exm
4. Administrative science	30 exm	
5. Environmental, Town and Country Development Law	30 rec., note.	
6. Principles of administrative legislation	15 rec., note	
7. Elements of civil procedure	30 rec., note	
8. Elements of criminal procedure	30 rec., note	
9. Petty Offences' Law and Tax Penal Law	15 rec	
10. Principles of preparation of administrative acts	30 rec.	
11. Diploma seminar	15	15 rec.

3.7 CURRICULUM OF THE TRAINING PROGRAMME FOR CANDIDATES FOR THE CIVIL SERVICE

*Marek Stefaniuk**

I. Basic knowledge about the state and the Law. Principles of the Constitution of the Republic of Poland – 10 hours

1. Sources of the law
2. Basic principles of the Polish Constitution
3. Basic categories of state organs
4. Constitutional rights and freedoms of citizens

II. Public Administration – 15 hours

1. The notion of Public Administration and Administrative Law
2. Organisation of Public Administration
3. Territorial self-government
4. forms of public administration activities
5. Employees of Public Administration. Labour Law, Civil Service Law
6. Control over Public Administration

III. Administrative procedures – 15 hours

1. Administrative procedure code
2. Procedure in Administrative Court
3. Administrative execution
4. Tax penal procedure

IV. Selected areas of Public Administration activities – 10 hours

1. Regulation of economic activities
2. Legal status of citizens
3. Selected areas of Public Administration activities – social insurance, public security, environmental protection

V. Public finance – 10 hours

1. Notion and scope of public finance

* Center for Self-Government and Administration, Lublin, Poland

2. Budget and budgetarian principles
3. Budget incomes
4. Budget expenditure
5. Budget discipline
6. Territorial self government finance
7. Public orders and tender bid procedures

VI. International co-operation – 5 hours

1. International standards of human rights
2. European integration
3. International organisations

VII. Management – 15 hours

1. Organisational planning
2. Organisational structure and design
3. Management of change
4. Human resources management. Negotiations and problem solving
5. Organisational information systems
6. Time management

VIII. Selected issues of economic politics – 5 hours

1. Market economy
2. Fiscal politics
3. Banking systems and monetary politics
4. Unemployment and inflation
5. International economic co-operation

3.8 CURRICULUM OF ADMINISTRATIVE LAW TEACHING IN THE FACULTY OF ECONOMICS AND ADMINISTRATION OF THE UNIVERSITY OF PARDUBICE

*Karel Lacina**

Administrative law has been taught in our Faculty since 1991, from the very beginning of our establishment. During the first three years we offered only Bachelor courses, but since 1994, we have both Bachelor and Master programmes.

Within the structure of these programmes the following groups of topics are taught:

Bachelor course:

- Role of human and civic rights in legal systems,
- Sources of administrative law
- Administrative legal standards
- Explanation and implementation of administrative law
- Constitutional and legal aspects in administrative law
- Subjects of administrative law
- Public administration
- State administration
- Local Government
- Forms of administrative activities
- Administrative acts and
- Contents of administrative activities.

Master course:

- Administrative legislation
- Administrative proceedings
- Administrative inspection
- Administrative offences and their solutions
- Review of decisions in administrative proceedings
- Legal guarantees in public administration
- Damage compensation in public administration
- Safety precaution law

* Faculty of Economics and Administration, University of Pardubice, Pardubice, Czech Republic

- Construction law and
- Trade license law.

There are some stimuli which highly influence not only the teaching of administrative law but also the teaching of subjects that are closely connected with administrative law:” City management (two-semester study),”European public administration systems” (one-semester study-planned for enlargement into two-semester study) and “ Legal aspects of European integration” (one-semester study). The above- mentioned subjects and their teaching are the reflection of the new role played by public administration and local government in our country since the end of 1989. That is why those subjects are explained to the students as individual disciplines. However, the explanation of the relationship between state administration and local government in the Czech, as well as at European level, play a very important role in the system of public administration teaching in our Faculty of Economics and Administration.

Our Faculty plays a relatively specific role in the system of Czech University study. There are only two Faculties of Economics and Administration in the Czech Republic. One is situated in Brno (the most important Moravian town) and the other in Pardubice.

Both faculties specialise in the teaching of future specialists, both for economic life and for state administration and local government. Studies have not been divided into individual branches until now, even though such a proposal has been discussed for a long time, and our students have obtained knowledge at master’s level from macro/micro-economics, management, marketing, financing, and also for law (and subjects based on law).

The above-mentioned specialization helps to an understanding of the legislative aspects of economic activities of the state, its bodies and authorities, as well as the economic activities of the municipalities. Their budgetary and contributory organisations play a very important role in the teaching of the law disciplines. We share the opinion that such an orientation answers to the rapidly changing role of legislation in the work of future civil servants. Our students who, as graduates/engineers, find employment, not only in different companies in the entrepreneurial sector, but also in the district offices representing the local state administration bodies, and in the municipal offices, last but not least, welcome this orientation.

An example follows concerning the the explanation of the role of municipal budgets in the teaching of administrative law principles in our Faculty and in the Czech Republic.

The principal rules of determining municipal budgets are stated especially in the Act No.576 of the Czech National Council, approved in December 20, 1990. This Act is one of the component parts of Czech Republic legislation. The whole philosophy of the Act is explained in the Bachelor course. Special attention is paid to paragraphs in Part Six of this Act in which it is underlined that “municipal budget is connected with the state budget of the Republic by the financial relationship represented by the grant and, respectively, by the recovery of financial assistance.

Compensation of expenses created by the municipality in connection with the fulfilment of tasks, bound together with the implementation of the so-called enforcement of state administration, is ensured in setting the grant from the state budget into the municipal budget or in setting its portion in taxes delivered into the state budget of the Republic.“ /Par.2l/

The municipal budget incomes are created by

- a) "returns of municipal property and transfers of means from own financial funds,
- b) incomes from legal subject activities as well as establishments founded and created by the municipality in the scope determined by the special Act and by incomes from the results of the economic activities of the municipality,
- c) tax collected from real properties situated in the territory of the municipality,
- d) the income of advancements to taxes paid by persons that have their place of residence in the territory of the municipality to the date of their payment, as well as the incomes of the tax from incomes of persons that had their place of residence in the territory of the municipality on the last day of the assessed period to which the tax obligation is related (with some exceptions)...
- e) 10% of the tax from dependent activities and from the functional hospitality income...
- f) 20% share in the district tax yield from incomes and from dependent activities as well as from functional hospitality...
- g) 20% share in the whole state income of tax from incomes of legal persons at the level answering to the ratio of the number of municipality inhabitants to the whole number of state inhabitants,

- h) income of the tax from legal persons, incomes in cases where the payer is the municipality citizen with the exception of the tax collected on the basis of the collision according to the special tariff,
- i) local fees and administrative fees for acts made by the municipality,
- j) credits, loans and returnable financial assistances,
- k) associated financial means, gifts, incomes from securities, collections and lotteries as well as other incidental incomes,
- l) grants from the state budget of the Republic and from the state funds of the Republic,
- m) grants from the district office budget and
- n) fines imposed by the municipality, respectively other penalties which are the component part of the municipality incomes on the basis of special regulations and other incomes fixed by generally obligatory legal regulations“. /Par 23/

Expenses from the municipal budget are also characterised by the Act in a relatively detailed way. In Par. 24 of above- mentioned Act it is underlined that “from the municipal budget are settled especially:

- a) expenses to the activity of the municipality, expenses and contributions to budgetary and contributory organisations managed by the municipality,
- b) grants and returnable financial assistance given to legal persons functioning in the territory of the municipality as well as grants and returnable financial assistances given to other municipalities,
- c) expenses for the support of private entrepreneurial activities of inhabitants,
- d) payments of credits and loans as well as interests from them,
- e) payments of returnable financial assistance,
- f) expenses of securities emission and the payment of income to their owners, as well as expenses of the securities purchase implemented from the municipal budget and
- g) contributions to common activities on the basis of the association“. /Par. 24/

The above-mentioned legal bases of daily economic life of the municipalities are first explained to the students in the form of lectures. Simultaneously, they are presented as the object of seminars and tutorial discussions. Last but not least, some of students return to the study of those problems when they write their Bachelor and Master final studies.

3.9 CURRICULUM DEVELOPMENT OF ADMINISTRATIVE LAW IN THE REPUBLIC OF KAZAKSTAN

*Gulshat Kozybaeva**

This article describes a specific approach connected with the teaching of Administrative Law (AL) in the Institute of Retraining and Improving the Qualifications of Civil Servants under the Government of the Republic of Kazakhstan (IRIQCS).

In order to reach the top in tomorrow's civil service, individuals will be required to be multi-skilled, flexible and capable of managing the most rapidly changing area of law – AL.

The goals, the content of the course and the specific methods of training are given in this paper.

INTRODUCTION

The years 1991-1996 were marked by fundamental changes in the legal system of Kazakhstan. It will be enough to indicate that within this period of time two Constitutions of the country were adopted, in 1993 and 1995, respectively.

Profound restructuring of the legal system of the Republic was caused by:

- the urgency to clean it up from the inherited vices of Soviet totalitarianism, which masked the real totalitarian and repressive nature of socialist law with ideological and political sloganeering; and,
- the need to set up a legal framework in line with the transformations accomplished in the economic and political system.

However, the legal system of the Republic has been in crisis, especially between 1991-1994, because of the following:

- many provisions of civil, labour, administrative, criminal and procedure law, and the judicial system, were established to satisfy the needs of a centrally planned national economy. They do not fit with the new economic and political processes and, therefore, impeded their implementation;

* Institute of Retraining and Improving the Qualifications of Civil Servants, Almaty, Kazakhstan

- courts, public prosecution, investigation agencies and the whole judicial system were less and less able to enforce law and order based on the former regulatory and organisational grounds. They were neither ready for market relations nor for transitional conditions; and,
- adopted laws and regulations were made ad hoc and often contradicted each other and the rights and legal interests of the citizens and economic entities. Departmental concerns dominated therein.

In 1991-1996 the legal framework was considerably renewed in Kazakhstan, and in some areas the second and the third generation of laws emerged. After the new Constitution was adopted in 1995, laws and regulations concerning different areas of economic, social and cultural development were accordingly drafted and adopted, including all constitutional laws stipulated by the Constitution.

In the social sector, during 1991-1996, legislative transformations failed to introduce significant changes in the position of socially vulnerable population groups, since they didn't change the core of the current social network. In this context, 1996 was the milestone year, as the important pension law was passed meeting the requirements of the new economic system and bringing it closer to world standards. But many issues in this sphere are still to be resolved. For example, there is virtually no legal regulation of the status of refugees, and employment issues still need to be worked out. A new Labour Code is to be adopted.

Consequently, the present critical needs include:

- humanising the legislative process;
- changing and correcting the present law enforcement procedures, especially in the economy;
- extensive retraining of lawyers; and,
- rapid adoption of such basic laws as Criminal, Administrative, Civil Procedure, and Criminal Procedure Codes.

“The State Program of Legal Reform In Kazakhstan” (Outline) adopted in 1994 is the basic document to reform the legal system.

According to the Program in administrative law it is necessary to abolish articles on offences which contradict the present social and economic transformations.

OVERVIEW OF THE INSTITUTION

The Institute (IRIQCS) was established on January 10, 1996 on the base of the Republican Inter-branch Institution of Qualification Improvement of Senior Officials and specialists under the Ministry of Economy of the Republic of Kazakhstan.

The main objectives of the Institute are:

- retraining and improvement of civil servants' qualifications on the basis of constant improvement of training quality, forms and methods of implementation of the educational process;
- elaboration of the curriculum on qualification improvement and administrative staff training of state servants, taking into account the category of their position and classification classes;
- realisation of co-ordination, and methodical guidance of inter-branch institutes and improvement courses of state servants' qualifications, active in Kazakhstan;
- realisation of the contacts with administrative organs, educational institutions, research institutions, consultation companies, public funds and other organisations of foreign countries, on the issues of administrative staff training;
- participation in the co-ordination of technical assistance programs to the Republic of Kazakhstan;
- consideration of projects on administrative staff training abroad;
- implementation of scientific research on issues of development and the effective utilisation of civil servants, evaluations, motivations and stimulation of their activities, forming of new administrative skills;
- organisation and implementation of republican and international conferences, meetings on the problems of administrative staff training;
- submission of proposals on administrative staff training for the consideration of the Government of the Republic of Kazakhstan.

More than 2000 students are annually enrolled on our courses. We hold about 200 workshops on nearly 30 different programs. Academic programs consist of 5 blocks: economy, law, management, information technology and international relations. The courses are short-term and last from 1 to 3 weeks. The teaching staff consists of 17 professors, doctors and masters of science and assistants professors. The Institute has modern lecture-rooms, computer classes, scientific-technical library and a publishing centre. Deputy

Ministers and Chairmen of State Committees, Heads of Departments and Independent Central State organs, their deputies and other civil servants, akims (country governors appointed by the President) and deputy akims of oblasts (administrative regions), regional and other structural subdivisions of akims' apparatus, heads of state unions, enterprises, organisations and institutions. Also people included in reserve for those positions are to be trained and prove their qualifications in our Institute.

In October 1997 we opened the faculty of retraining of civil servants and begin a Master of Public Administration Program (2 years, part time).

CURRICULUM OF THE COURSES

- **Organisational benefit:** design-making in accordance with the law, and hence a reduced risk of successful legal challenges.
- **Designed for:** heads of ministries, state committees, akims of oblasts (see above), leaders of legal and personnel services, local executive bodies, akims (see above) of rural districts and settlements.
- **Aim:** on completion participants should be aware of some of the more important recent developments in the field of AL; to understand the basis principles of AL and its potential impact on their work; to understand the legal framework of government and the relevant legal terminology.
- **Content:** lectures, case studies, discussions and group practical exercises, round tables, etc.

METHODS OF TEACHING LAW

We will attempt to present our Institution approach to teaching AL. We have worked out the procedure of correcting the program of a training workshop.

1. In the first lesson (during the workshop presentation) we gave to our students an entrance test in order to determine their level. Then we collect questions (those questions and problems which our students want to clear up in the framework of this course).
2. According to the results of the test and entrance questions it is necessary to correct the program and the schedule, and find specialists which can give qualified answers.
3. Then we composed an outlet test with 5-6 alternative answers on each of the questions.

4. At the end of the workshop, according to the results of the second test, we appraised the knowledge of the students.
5. The next step: Students filled out a questionnaire about the course, lectures, etc and give their own marks.
6. The final lesson: The working out and generalisation of students' proposals for Government, Parliament and so on.

CONCLUSIONS

In spite of the fact that we have achieved certain results in the teaching of AL, all the problems of legislation are reflected in the course of our academic process. There is a lack of information and co-ordination, imperfect legal base, a low level of legal knowledge, and economic difficulties.

We hope that co-ordination and collaboration with institutes and schools of PA will help us to improve our results in this area.

3.10 TRAINING OF HIGH EXECUTIVE CIVIL SERVANTS IN ADMINISTRATIVE LAW AND DIALOGUE METHODS OF MANAGEMENT IN THE PERIOD OF REFORM

*Abiken Tohtybekov**

Students: High executive civil servants (ministers, heads of agencies and state committees, akims and their deputies)

Particularities of the training process of high executive civil servants:

- Insufficient time for their training;
- Presence of good practical skills of management activity;
- High levels of self-evaluation;
- Need to observe problems more systematically and strategically;
- Ability to give grounded recommendations on the questions of Administrative Law.

The main goals are to develop the following skills:

- system analysis and critical thinking during discussions of theoretical and practical administrative problems;
- modelling and flexible usage of the realisation mechanism of executive power functions;
- working out the recommendations to the Government on improving the realisation mechanism of executive power.

The main problems:

An analysis of our practice shows that the modern system of state management in Kazakstan does not provide any social functions during the process of the Reform Program.

Reasons:

- imperfection of the Administrative Law and Management;
- Incapability of administration to realise the requirements of legislation.

* Institute of Retraining and Improving the Qualifications of Civil Servants, Almaty, Kazakhstan

Systematically improving the management-legal qualification of high executive civil servants to promote the development of the state apparatus role in the realisation of reform.

The problems require:

1. Comprehending and system analysis of current Administrative Law and Management;
2. Working out recommendations for the Government in order to improve the mechanism of the realisation of the executive power.

The training programs.

Main methods of training programs are:

- Initiative (institute of civil servants);
- Contractual (institute and ministry - state body);
- Directive (Government).

The training methods.

- Lectures;
- Round-tables;
- Workshops;
- Case-studies;
- Conferences;
- Discussions;
- Observation of state offices.

The results of the training.

- Up-dating of management-legal qualification;
- Working out the recommendations for improving Administrative Law and the mechanisms of executive power realisation;

Civil servants' evaluation system.

- Entrance testing;
- Out-going testing;

Evaluation system for lecturers and experts:

- Questionnaire.

The list of literature used for teaching administrative law in our institute:

1. The Constitution of the Republic of Kazakstan. Almaty, 1997.

2. The Kazak SSR Code on administrative law violations. Almaty, 1996.
3. The Law on the President of the Republic of Kazakstan.
4. The Law on the Government of the Republic of Kazakstan.
5. Collection of Decrees of the President & the Government of the Kazak Republic on the civil service. Almaty, 1997.
6. The Law of the Republic of Kazakstan on the local representative bodies in the Kazak Republic. Almaty, 1996.
7. Administrative Law. Almaty, 1997.
8. State programs of the Republic of Kazakstan. Collection of documents. Almaty, 1996.
9. The state transformation. Republic of Kazakstan. Recommendations of the World Bank. Almaty, 1995.
10. Tihomirov J. Application of Law. Moscow, 1994.
11. Atamanchuk G. The theory of the state administration. Moscow, 1996.
12. Tohtybekov A. The conception of civil service reforming in Kazakstan "Policy", 1996, N6.

3.11 ADMINISTRATIVE LAW IN LATVIA

*Jautrite Briede**

At present The Latvian School of Public Administration does not have a training course in administrative law. There are four divisions of the full course of training for civil servants (each period is 40 hours per week): 1. basic course in market economics. 2. basic course in management, office management. 3. basic course in law and administration, Latvian history and civics. 4. social psychology and ethics, computer skills. Administrative law is part of the law and history division. A civil servant has the right to use four weeks over a two-year period or two weeks per year for training. The sequence of the subjects is chosen by the civil servant. The civil servant evaluates his own level of knowledge and does not have to attend training courses if he thinks that his knowledge is sufficient for passing the examination.

The civil servant becomes eligible for training after he has passed entrance exams in Civil Service Administrations and become a civil service candidate.

Training takes place according to an approved training programme in centres of quality corresponding to the demands of the Latvian School of Public Administration. Such centres are being established in all universities in Latvia and other educational institutions, including private institutions.

The civil servant candidates will be able to prepare for the examination using the training materials and lecture notes available in the Latvian School of Public Administration, or personnel departments of their ministries or agencies, together with lists of reading materials in individual subjects.

In training a large number of civil servants candidates in such a short time, the school is only able to give basic knowledge in the most important subjects. Training programmes will be gradually improved according to demands set by the experience of the present training programmes and in accordance with the further development of the administrative system in Latvia. After the end of the certification process of civil servants the Latvian School of Public Administration plans to establish advanced level training

* Latvian School of Public Administration, Riga, Latvia

courses that will help the civil servant in his professional development and career development. The Latvian School of Public Administration must become a professional training institution with a practical orientation. Training programmes should be orientated towards acquiring practical skills.

The Latvian School of Public Administration has been in existence since 1993.

Section 4
Case studies in
Administrative Law

4.1 CASE STUDY: THE POWERS OF PARLIAMENT AND GOVERNMENT IN LATVIA

*Anita Ušacka**

According to the Constitution of the Republic of Latvia the right to make legislation belongs to the Parliament (Saeima). But this legislative power can be also delegated to the executive - Cabinet of Ministers. Article 81 of the Constitution declares that “in cases of urgent necessity between session, the Cabinet shall have the right to issue regulations which shall have the force of Law. These regulations shall not modify: the law of election to the Saeima, laws bearing on judicial constitution and procedure, budget rights, and *laws passed by the Saeima then in power*; they shall not refer to amnesty, the issue of Treasury notes, State taxes, customs’ duties, railway tariffs or loans, and they shall be annulled if not presented to the Saeima within three days of the opening of the following session”.

In 1995 the Saeima passed the Law on Regulating Business Activity in the Energy Sector. In 1996 the new Saeima was elected. At the end of 1996 this Saeima passed the Law Amendments to the Law “On Regulating Business activities in the Energy Sector”, by which Clauses 5,6,7 and 8 of Article 27 were deleted, but the Saeima rejected the motion of the Cabinet of Ministers to delete Clauses 9 and 10 of Article 27.

On January 1997 the Cabinet of Ministers, in compliance with the procedure set by Article 81 of the Constitution, passed Regulation Nr.23 ‘Amendments to the Law “On Regulating Business Activity in the Energy Sector”’, which changed the wording of Clause 9 of Article 27 of the Law, and Clause 10 of Article 27 was deleted.

On March 1997, 35 deputies of the Saeima submitted an application to the Constitutional Court, petitioning to annul regulations Nr.23, and pointing out that the Cabinet of Ministers had violated the restrictions of Article 81 of the Constitution, that states that regulations may not change laws passed by the Saeima then in power. The representative of the application pointed out that the Saeima had completed its legislative function in its meeting at the end of 1996, by rejecting the motion of the Cabinet of Ministers to make this change and deciding to leave the legal norms, as they existed and passed by the previous Saeima as valid. The assumption that “ laws passed by the Saeima then in power” - as used in article 81 of the Constitution - should be understood

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broadly as a manifestation of any legislative function of the Saeima. Besides, it was pointed out that Latvian legislative tradition, when publishing a law on amendments to an existing law, do not consider it necessary to indicate either that a debate on an Article has taken place or that the wording of the Article remain unchanged. The representative of the application emphasized that Article 81 of the Constitution should be interpreted in the light of Article 1 of the Constitution, which declares Latvia a democratic state, placing the principle separation of powers as the basis of interpretation and resolving all doubts about the rights of the Cabinet of Ministers, in favour of the Saeima, as the main and ruling legislative institution.

The Cabinet of Ministers, in its reply, submitted to the Constitutional Court explained that Regulation Nr.23 had not altered the law passed by the extant Saeima, because the Law on regulating Business Activity in the Energy Sector had been passed by the previous Saeima.

What are the important facts of this case?

How should this case be decided?

The Decision of the Constitutional Court:

The Constitutional Court, in evaluating the conformity of Regulation Nr.23 and Regulation Nr.54 to the Satversme, to the Law “On Regulating Business Activity in the Energy Sector”, to the law on the system of the Cabinet of Ministers, and to other laws, declares the claim of the petition to be well founded and to be satisfied:

In conformity with Article 81 of the Satversme “between the Saeima sessions, if urgently needed, the Cabinet of Ministers has the right to issue regulations with legal force”. Article 81 of the Satversme is restricted in terms of content, and one of the restrictions is that the Cabinet of Ministers shall not change laws passed by the extant Saeima. If the above restriction is violated such regulations, of the Cabinet of Ministers, will be regarded as anti-constitutional and invalid.

The concept “laws adopted by the extant Saeima” incorporated in Article 81 includes not only the published text of the law passed by the Saeima, but also motions on perpetuating those standards, in former and still valid wording, that the Saeima has considered and adopted in the third reading of the draft, even though they are not included in the published text of the law.

Its basis is Article 112 of the Saeima Regulations, which determines that “after considering all motions the Chairman of the session will put the draft, together with adopted motions, to the vote, in conformity with the first part of Article 114 of the Saeima Regulations”. The draft is considered passed and becomes law if, when voted on in its totality, it receives the absolute majority vote of the deputies present at the session.

Regulation Nr.23 formally alters only the ninth and tenth Clauses of Article 27 of the Law “On Regulating Business Activity in the Energy Sector”, but in substance the above mentioned regulations alter the Law “Amendments to the Law “On Regulating Business Activity in the Energy Sector”, passed by the extant Saeima on November 25, 1996.

The draft “Amendments to the Law “On Regulating Business Activity in the Energy Sector”, submitted by the Saeima by the Cabinet of Ministers on December 21, 1995, proposed to delete Clauses nine and ten of Article 27 of the Law “On Regulating Business Activity in the Energy Sector”. As can be seen from the verbatim report of the Saeima meeting of November 25, 1996, the deputies, whilst giving consideration to the draft in its third reading, adopted the motion not to delete Clauses nine and ten of Article 27, and passed the law in its entirety.

Thus, the Saeima, by adopting the motions, as well as by voting for the draft of the law and the motions in their entirety, has expressed its will to retain Clauses nine and ten of Article 27 in their previous effective wording.

Therefore, the Cabinet of Ministers could not alter Clauses nine and ten of the Law “On Regulating Business Activity in the Energy Sector” in accordance with Article 81, even though the decision of the Saeima on retaining Clauses nine and ten in their previous wording was not formally included in the text of the Law

Amendments to the Law “On Regulating Business Activity in the Energy Sector”, passed on November 25, 1996.

In consideration of the above, the Constitutional Court decided:

To declare Regulation Nr.23 of January 10, 1997, “Changes in the Law On Regulating Business Activity in the Energy Sector”, as not corresponding to Article 81 of the Satversme of the Republic of Latvia, and is null and void from the time of announcement of the verdict.

4.2 CASE STUDY: “CIVIL SERVICE LAW IN THE KYRGHYZ REPUBLIC”.

*Bolotbek Orokov**

In December 1991 the Kyrgyz Republic became an independent country. In these few years of independence the civil service in Kyrgyzstan has undergone significant changes. These changes were supported by the appropriate legal basis. Now the basic existing act is the Regulations called “On basics of civil service in the Kyrgyz Republic”, which was enacted by a Decree of the President as of June 14, 1996. The basis for these Regulations is the draft Law on the Civil Service in the Kyrgyz Republic. This Law has been through the first reading in Parliament. However, this most important act is not yet finally enacted by Parliament, which creates many problems in public administration, wherein the status of civil servants is not precisely identified. According to the above Regulations the following bodies are considered to be under public service rules:

- Presidential Office;
- Jogorku Kenesh and its committees (Parliament of the country);
- Cabinet of the Ministries, Ministries themselves, State Committees and Agencies, Local Administrations;
- Constitutional Court, Supreme Court, Supreme Arbitrage Court, and Local Courts;
- Central Commission on Elections and Referendums.

Those working for the above listed bodies are considered to be civil servants. Civil servants are those with executive, decision making power and responsibilities, as well as administrative authorities.

There is not a sufficient legal basis in the regulations for the protection of the rights of civil servants and their career development. Because of a lack of such a law there is no precise procedure for the hiring of civil servants, as well as their promotion and dismissal. Issues concerning civil servants' performance appraisal, their training, retraining and the continuing improvement of their qualifications are not clearly stipulated by the existing legislation for labour and Presidential decree.

According to the Regulations “On Basics of Civil Service in the Kyrgyz Republic” a civil servant is a citizen of the Kyrgyz Republic who is occupying

* Academy of Management under the President of Kyrgyz Republic, Bishkek, Kyrgyzstan

a paid government position. The following shall **not be considered civil servants**:

- a) The employees on the staff of the agencies, institutions, and enterprises, including the managerial personnel of the said bodies, that are under authority of governments and carry out research, cultural, educational, health care and other work on serving the population, which are not related to executive-administrative functions of the governments. For example, people who are teachers in public schools, or doctors in public hospitals. These can be permanent, or non-permanent employees paid from the budget, or non-budget sources.
- b) Members of the technical and service personnel employed in the governmental institutions, the list of which will be approved by the Cabinet of ministries of the country. For example, support people such as computer technicians, secretaries, cleaning staff etc.

Civil service in the Kyrgyz Republic is defined as the labour activity of employees related to professional performance in government, established by the Constitution, laws and other regulations. Labour activity is defined under the Law on Labour. Permanently employed personnel paid from the budget qualify under this law.

In the Kyrgyz Republic there are cases where a particular citizen cannot be employed in the Civil Service if he does not have connections with relatives or friends or has some relations to a person who has the authority to make the decision. Employment is often based on patronage or favouritism, rather than merit or qualifications. Official regulations provide a clause on the basis of entering the civil service, as follows:

The right to enter Civil Service shall be enjoyed by able-bodied citizens of the Kyrgyz Republic with the educational background and professional level corresponding to the given position.

Additional requirements may be established by laws of the Kyrgyz Republic for joining some sections of the civil service.

Positions shall be filled by appointment or on contract, procedures for the latter to be determined by the Cabinet of the Kyrgyz Republic.

From this clause we can see that nothing is mentioned about any restrictions or discriminations of citizens entering the civil service. These are restrictions on citizens being employed in the civil service based on their ethnic, sex, religious or social group. It is difficult to control administrative discretion on this issue.

One of the weakest points of the legal basis of the civil service system is the fear of losing employment. Regulations “On the basics of Civil Service in the Kyrgyz Republic”, have just declared that in the event of the reorganisation of a governmental agency a civil servant who loses his position should be offered a job in another governmental institution, with due account for his specialisation and level of qualifications, if it is impossible to provide him with a job in the same agency. It often happens in Kyrgyzstan when some civil servants lose their jobs, in the case of personnel reduction in their agencies, they fail to obtain another. Nobody offers these newly unemployed people any jobs in any governmental agency. Even if some of them apply to a court for the protection of their rights as civil servants, and get a positive decision from the courts, the government still does not offer any job and does not assume any responsibility.

If it is impossible to give a job to such a civil servant, the Regulations say he should be guaranteed retraining, with the salary paid in the same amount as his previous position for the period of retraining, and maintains the continuity of his record of service. So, according to these clauses civil servants have a certain degree of employment protection (security). But there is another clause in the same Regulations which states: “When dismissed in connection with liquidation of staff or numerical strength of his organisation, a civil servant shall be paid for three months the average salary due to him from his previous position and shall be paid the severance pay in the amount of three months of his average salary in the previous position for a total of 24 months of salary. One clause provides employment protection, while the other provides only salary provisions.

In reality civil servants are generally dismissed by the heads of governmental agencies based on the latter clause. That is why we may consider that there is no real employment protection (security) of civil servants.

According to the Regulations the career development of a civil servant is not stipulated. There is a clause in the Regulations which says that for faithful job performance ... and other achievements, servants will be awarded the followings:

- Promotion;
- Monetary prizes amounting up to five times his salary;
- Other benefits established by law.

In the Kyrgyz Republic such a declarative legal basis (on servants' promotion) does not guarantee actual promotion. It often happens that when a high

performing servant works in the same position for too long a time they may not be promoted, while another person is rapidly promoted, even if his work is worse than the other person.

Not all provisions of the Regulations on civil service basics are being infringed on in Kyrgyzstan. For example, the provisions on servants' annual leave are guaranteed and do not raise many problems. Servants shall have an annual paid leave of thirty calendar days and recuperative compensation to the amount determined by the legal normative acts.

Questions for discussion:

1. Is the definition of a civil servant in the Kyrgyz Republic clear enough?
2. How can you define civil servants?
3. What should the Kyrgyz Republic do to create a Law on Civil Service?
4. How would you define civil service?
5. Are there any differences between the civil service and public service?
6. What could you recommend to put into the Law on Civil Service to provide equal protection of individual rights concerning entry into the civil service?
7. Are there any contradictions in the Regulations "On Basics of Civil Service in the Kyrgyz Republic", concerning servants' employment protection?
8. What kind of changes or amendments, respecting employment protection would you suggest for the Regulations on Civil Service basics if you were a legislator in Kyrgyzstan?
9. Why are the provisions on servants' promotion of the Regulations are often not observed in reality in the Kyrgyz Republic?
10. What amendments would you recommend for the Regulations to create a better Law?

4.3 CASE STUDY: THE DISMISSAL OF THE INSURANCE INSTITUTE (INSIG) DIRECTOR

*Kastriot Alike and Blerta Alike**

Background:

The Insurance Institute (INSIG) was created in 1991 as a non-budgetary institution. Its activities are regulated by a special law according to which INSIG is a state institution that performs its economic and financial activity independently from the state and is independent from the Ministry of Finance of Albania.

The dilemma “to be or not to be director” started for the INSIG Director Qemal Disha on May 23, 1997. On that day the Finance Minister, Arben Malaj, signed the dismissal order for Disha who would then be given another position by the Minister of Finance. Disha challenged that decision and the next day initiated an action against the Finance Minister in a Tirana court.

Law 8081, dated March 7, 1996 entitled “On Activities of Insurance and Reinsurance” began the process of transforming INSIG into a joint stock society. The Finance Minister at that time, Ridvan Bode, had charged Disha, as director, to perform this process of transformation to be completed by December 31, 1996. Disha was to continue as director until this transformation was completed though the supervising council’s mandate would expire on December 12, 1996.

Various laws and rules, provided herein, such as Article 7 of the Law on Insurance Institute, Article 16 of the Charter on Insurance Institute, and INSIG Article 4 are directed at the authorities of the Minister of Finance, the Director and Council of INSIG.

The transformation process of INSIG was not completed by December 31, 1996 and it continued to function into 1997 without any significant changes. Disha continued as director after December 31, 1997. In early 1997 the government collapsed and a Caretaker Government took over power. It was under this government that Arben Malaj became the Minister of Finance.

* Institute of Management and Public Administration, Tirana, Albania

The Court Proceedings:

Judge Luan Daci, of the Tirana court, heard the case between INSIG's director Qemal Disha and the Finance Minister Arben Malaj. The court heard the following arguments at issue in the case.

Competence of the Government Minister:

Disha's Advocate: "The dismissal is not under the minister's competence because the Caretaker Government has a restricted mandate."

Finance Minister's Advocate: "The advocate read to the court the law concerning governments in the Principal Constitutional Dispositions and added "The Caretaker Government is a government like all others and it performs all functions defined by law, which is the same for all governments, in spite of their titles."

Status of INSIG:

Disha's Advocate: "The Finance Minister infringed the Labour Code by dismissing him and INSIG's supervisory council".

Finance Minister's Advocate: "The dismissal of INSIG's director had nothing to do with the Labour Code, since according to an order of ex-Finance Minister, Ridvan Bode, INSIG should have been transformed by now into a joint stock society. INSIG's current supervising council's mandate expired on December 12, 1996. Disha had not executed the government decision of transforming INSIG into a joint stock society, and hence, the term of the supervisory council had expired".

Status of the Director:

Disha's Advocate: "The ex-Finance Minister had extended the period of Disha's serving as director until INSIG had been transformed into the joint stock society".

Finance Minister's Advocate: "The conflict between INSIG's director and the Finance Minister is an administrative problem and not under the court's jurisdiction. Since the joint stock society is still not established then the appointment and dismissal of INSIG director can be done solely by the Finance Minister. According to the INSIG charter, which is still in effect, since INSIG has not become a joint stock society, the director is appointed for a four year period by the Finance Minister."

Status of Disha:

Disha's Advocate: "The order of the Finance Minister is unlawful since it has infringed on the work relations sanctioned by the Republic of Albania's Labour Code. Disha was not consulted in advance by the minister before being dismissed by him."

Finance Minister's Advocate: "Based on Article 329/2 of the Civil Code, an order suspending the administrative action by the court can be executed only when there exists the danger of causing a great harm to the plaintiff (Disha). In this case no great harm is created since Disha would be appointed to another position."

This is where the story ends. The deadline for transforming INSIG has passed without the task being accomplished. The director has to be appointed by the Finance Minister. The previous minister continued in the appointment of the director. The change of government brought a new Finance Minister who issued an order dismissing the director and providing him with another position in the Finance Ministry.

Questions for Discussion:

1. How would you analyse this case based on the legal acts and the administrative law procedures in your country?
2. How would you deal, in this case, with the issues of the Caretaker Government, the status of INSIG, the status of the director and the harm to Disha, if you were the judge?
3. What would be your legal reasoning and decision in this case?
4. Could you write the judge's opinion for deciding this case?

4.4 ANALYSIS OF A LEGAL PROBLEMS

*Bernhard Schloer**

During the summer workshop some cases were presented. One, the INSIG-case, was discussed with many different aspects to be analysed. The question arose as to an efficient way to handle the analysis of such cases. I will present one way to analyze these cases. It can serve as only the basis for further discussion, not the golden rule to happiness!

- I. Every legal problem should be treated according to the law. A rather simple statement, but everyone who has done this work knows that it is sometimes an arduous task. This paper presents some ideas for a method to analyze cases.

Example: A law states: "Who has reached the age of 18 has the right to vote".

Question: Tom is 19, can he vote?

The answer is yes, of course! But what did the reader of these sentences do? He read the law and knew that there is one condition for the right to vote. Then he - automatically - checked the facts, whether this condition is met or not. And then, he could easily answer: yes!

If the case is more complicated, the answer cannot be found immediately and you need a methodological approach.

- II. The solution of a legal problem has to show a result and prove why and according to which laws this result was developed. This is an aspect of the rule of law.
 1. The result is the answer to a question which is concrete or follows from the problem given in the case.

If we look at the INSIG-case the question is, whether the Director had been dismissed legally or not.

2. Reading all the materials of the INSIG-case, you identify many questions and aspects which have to be answered and analysed. Each by itself will not give an answer to the ultimate question. They have to be put together in a system and according to a method.
- III. There are three well-known methods: The historical approach, the logical and the topical approach.

* Ukrainian Academy of Public Administration, Kiev, Ukraine

1. The historical approach treats the case as a history and analyses it from its beginning. Each historical complex is analysed separately. The problem is, that the structure of the case is divided into parts and loses the systematical context. This leads to irrelevant work and wrong conclusions.
2. The logical method begins with the question and then begins to search the law which gives the answer to the question of the case. The terminus technicus for this answer of the law is “legal consequence”.

In the INSIG-case the appropriate question is whether the director can be dismissed or not.

The legal consequence is bound to conditions, “constituent fact”. They are examined and put together. If there are many questions at the end you can say whether they are proved or not. (But there are some more steps to do, see IV below).

3. The topical method is a formalized way to deal with the logical method. Many legal consequences have an identical system of constituent facts. Therefore, the practice has developed a catalogue of checks, which are useful in general. Typical are those catalogues for the questions of procedural requirements. But an uncritical use can lead to wrong answers.
- IV. The logical method asks first for the suitable legal consequence(LC) of a law. This first step has to be done very precisely because it determines the starting point for the following work.

2. The law was found, now follows the analysis of the constituent facts. A law has usually a structure like this: $a + b + c = LC$.

The analysis concentrates on the question whether the constituent facts are joined cumulative or alternative. This means, whether the law says a “and” b “and” c must be given. Or if it says a “or” b “and” c must be given for LC.

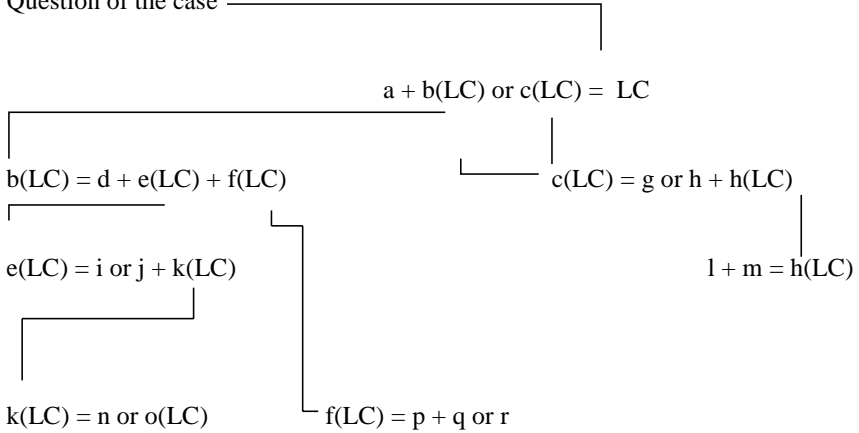
Further, the analysis has to make clear what kind of constituent facts the law uses. They may be simple facts, like age or things. They can be indeterminate terms, like reliability. Finally, they can be legal consequences themselves, for example: Every Hungarian who has reached the age of 18 has to pay a special tax. The quality “Hungarian” is the result of the law of citizenship, the symbols look different: $a(LC) + b = LC$.

In complicated cases, many laws depend upon each other, so that the structure looks for example like this:

In the INSIG-case, the legal information is not complete. It may be that Article 16 of the Charter of Insurance Institute gives the legal consequence.

But there is a need to clarify whether the “right to appoint” includes the right to dismiss, the “actus contrarius”. The problem is that there are no

Question of the case



and so on.

constituent facts. They have to be developed from the general principals of the administrative law and the constitution.

3. Until now, the whole thinking is a theoretical one. Now, the reality is connected with the legal structure. This step is the subsumption.
 4. At the end, there has to be a result, an answer to the question that stood at the beginning. It is very useful to check the question and answer again in order to avoid silly mistakes.
- V. This idea of the logical method is only an idea. This method is used broadly, but that doesn't mean that it is the best or most suitable one.

4.5 CASE STUDY: WHAT'S IN A NAME?

*Zofia Duniewska**

Administrative law is an extremely extensive branch of law consisting of thousands of regulations. The scope of this law covers regulations of political, procedural and substantive law. In administrative law textbooks the attention is usually focused on administrative law theory, and afterwards on the political and procedural part. The most comprehensive part of administrative law is law of substance. It relates to all the spheres of life of an individual who is involved in the activity of the society which constitutes a state. That part of administrative law includes many regulations referring to citizenship, registry office acts, changes of names and surnames; population registry, natural environment protection, health care, social welfare, building issues, etc.

The specific nature of administrative law means that we often come under administrative recognition. We deal with administrative recognition when regulations permit legal administration to select one of the possible legal consequences provided by the regulations. Moreover, inaccurate and indefinite notions which allow public administration to apply free interpretations are commonly used. The result of the applied interpretations does not always conform to the expectations of the party in administrative proceedings whose question is being settled by the administrative body applying a free decision-making procedure. Consequently, such cases are finally adjudged by the Superior Administrative Court. This phenomenon may be exemplified by numerous questions settled by the Court on the basis of Article 50 of The Registry Office Acts Law of 1989 that may seem apparently easy to interpret.

According to this Article the superintendent of the Registry Office is obliged to deny, by means of an administrative decision pronouncement, to enter in the Registry Certificate more than two names, a derogatory name, an indecent name, a diminutive name, or a name that makes it possible to distinguish a child's sex.

Disputes that arose in practice particularly concerned denials to enter the name: "Mary" for a man; "Annamaria" - written as one word; a name that is not included in the Official Names Book; a non-Polish name.

Independent of this, disputes concerning the interpretations of a derogatory name and an indecent name also arose in practice.

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The above-mentioned simple examples prove that apparently uncomplicated legal recording may create doubts. Similar and even more serious complications may result from other numerous regulations and more complex legal constructions coming within the sphere of administrative law. Those doubts may concern namely: the search for a legal rule that may be a binding regulation for a particular status quo, the necessity to determine a legal rule and to find an appropriate body to settle a question and give right interpretations of the applied legal notions, or to explain certain legal constructions. It is often extremely difficult to decode a legal rule in administrative law. Therefore, it is duly accepted that law interpretation principles and their applications are of significant importance for that law. The right and consistent interpretation of the law guarantees that fundamental principles in a democratic state of the law, reliability of the law, equality before the law and confidence in the state governing bodies are preserved.

4.6 CASE STUDY: NAMING A BOY IN SWEDEN

*Glen Wright**

This case is taken from article in the International Herald Tribune of September 4, 1997

Authorities in Sweden last year told a couple who named their son Bfrxxccxxmnpckccoel 1 lmmnprxvolmncckssqlbbl 1116 to find a new, shorter name for the boy, but have now rejected his new name – A, according to the Hallands Nyheter newspaper. Initially, the parents refused to provide tax authorities with a name for their newborn son. After some contention, the parents finally provided them with the 45 letter and digit sequence, which they say is pronounced “Albin.” That resulted in a 5,000 kroner (\$625) fine from the tax authorities in 1996 for defying the Swedish Name Law. This summer, the couple registered their son as A. The tax authorities also rejected that name, as single letter names are not allowed. An appeals court upheld the decision. The parents have previously explained that they “chose a meaningful, expressionistic typographic formulation which we consider to be an artistic new creation in the pataphysical tradition in which we believe.” The boy, who is still officially nameless, has a passport on which his name is given as Boy Tarzan.

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