

## ADDITIVES TO THE DOGMATIC FOUNDATIONS OF THE PUBLIC ADMINISTRATION

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**ABSTRACT:** *The public administration is as old as the state itself, because its general task was, and still is, to organise the practical execution of the state's responsibilities. Despite thousands of years, the dogmatic foundations of the public administration are far from solid, because they were, they are and they will most likely continue to be in a state of constant change. The study aims to contribute to the clarification of dogmatic foundations by defining four concepts built on each other: the state, the organization, the administration and the public administration.*

**KEYWORDS:** *State; state tasks; organization; administration; public administration; administrative tasks.*

**JEL Code:** *K00, K23*

### INTRODUCTORY THOUGHTS

As long as there has been a state and a state power, there must also be an administration, since (state) decisions taken by authorized bodies - and/or persons - had to be implemented by a body or a person at all times. In this sense, the social function of the public administration is to implement the state decisions (parliamentary or royal: royal or imperial) and to organize their implementation.

It follows that not only the concept of the state, but also *the public administration has thousands of years of history*. Because of this, there was plenty of time for the science to develop the dogmatic foundations of the public administration. Nevertheless, we consider that the question of dogmatic foundations is still relevant today, since the state and the public administration have not only changed in the past, but are still changing now, and will certainly change in the future! Simply because the circumstances that determine the tasks of the state and the public administration are constantly changing.<sup>1</sup>

As an *umbrella term*, the term "dogmatic foundations" - indicated in the title of this study - encompasses a number of concepts, of which, in view of the limitations, only four

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<sup>1</sup> We will talk about this more in detail later!

closely interconnected ones are reviewed in this study: the state, the organization, the administration and the public administration.

### 1. THE CONCEPT AND TASKS OF THE STATE

The concept of the state, as well as the place and time of its formation, are usually defined differently by different authors. In our opinion, this is natural. However, consensus has been formed on two issues. One of them is the *concept of the state*, the other one is the essence of the concept of the state. From this point of view, we are quoting only two authors, one German and one Hungarian, because the quotations make the concept of the state clear, at least in our opinion. The two authors highlighted by us are Roman Herzog and Péter Takács.

According to *R. Herzog*, the essence of the concept of the state, "its primordial phenomenon ... it is the power exercised by one man over other people." (Herzog, 9. 1999.) In addition to power, there must be at least one other criterion, because there are many types of power. This other criterion is „a permanently established organization of power,... which implies the existence of offices which are held by their occupants as their main occupation.” (Herzog, 9-10. 1999.) Thus, the essence of the state, according to Herzog, are two concepts: power and office.

P. Takács expresses it similarly, but in more detail. According to him, there are two possible definitions of the state. According to one, „... A state is an institution of power that has sovereignty over a population living in a given territory." According to the other „... The State is an organisation with a legitimate monopoly on legal physical coercion.” (Takács, 28. 2014.) It can be stated that, according to Takács's position, the most important characteristics of the state are: the land, the population, the sovereignty and the legitimate use of coercion..

*For our part*, we agree with the ideas of both authors cited, with an attempt to unify the conceptual elements. From the point of view of public law, the concept of the State can be defined as follows. The state is a specific piece of land, separated from all other lands

- including airspace up to the Kármán line (80 to 100 km) and territorial sea extending up to 12 nautical miles,
- above the population living there,
- is characterised by sovereignty, and
- this sovereignty is exercised by (State) bodies made up of professionals, with a monopoly on legal coercion.

The other question, on which there was also a consensus, is that the abandonment of the migratory, gathering, hunting and fishing lifestyle was made possible by the „invention” of handicrafts, crop production and animal husbandry for smaller or larger communities living in tribal-clan societies. This may have occurred after the last ice age, about seven to nine thousand years ago, in certain river valleys in today’s Middle East. Some examples of the first settlements or cities are Çatalhöyük in present-day Turkey, Jericho and Einan in present-day Palestine, and Ur and Uruk in present-day Iraq. (Herzog, 13-57. 1999.) In connection with this, the question arises: for what purpose did the people living in the given region create the state, that is, what are the most ancient tasks of the state? As for the answer, we essentially agree with R. Herzog, who designates the four most ancient state tasks as follows: defense against external enemies, struggle for water, cult (religious) tasks, and judicial duties. (Herzog, 63-69. 1999.) We only add the following: the crafts, crop production and animal husbandry associated with settlement eventually resulted in a surplus of products for the settled community. Tribal-clan leaders began to dispose of this as their own, and over time, private property appeared, which exploded the tribal-clan society based on equality and led to the formation of the state, including public administration. In view of all this, we believe that the protection of private property should be included among the oldest tasks of the state.

As far as the *tasks of the modern state are concerned*, it must be assumed that there has not been, and probably never will ever be, complete agreement in the literature not only regarding the formation of the state, but also in the assessment of the tasks of the state. This is also (perhaps) natural, since the social environment surrounding the state - and thus determining the role, function and task of the state - is also constantly changing.

The modern European state has its roots in the highly centralized *police state* of feudal absolutism of the seventeenth and eighteenth centuries. In a state whose primary task, in addition to the most ancient tasks of the state, was to maintain internal order and security. Legislature, executive (administration) and judiciary in today's sense were concentrated in a single hand. On this basis, the monarch acting on behalf of the state intervened in the living conditions of the population at his own discretion in the absence of legal regulations, thereby rendering the people completely vulnerable.<sup>2</sup> However, socio-economic development led to the strengthening of the bourgeoisie and the victory of bourgeois revolutions.<sup>3</sup> From the point of view of state organization, this meant the fall of the police state and the victory of the *rule of law*, which took place in the late eighteenth and early nineteenth centuries. The fundamental task of the rule of law, in addition to the tasks of the police state, became to fix and protect the rights of people who have become citizens. In other words, the legalization or subordination of the actions of state bodies. A fundamental feature of the rule of law, in addition to the sanctity of private property, is the division of state powers: legislative, executive and judicial.<sup>4</sup> This is done in such a way

<sup>2</sup> It is not for nothing that some attribute it to the "Sun King", that is, Louis XIV. To King Louis of France (1638 - 1715), the following statement, which was made in the French Parliament: "The state is me!" Really said XIV. Louis, "The state is me"? (urbanlegends.hu) Retrieved 13.07.2023(wikipedia.org) Retrieved 13.07.2023

<sup>3</sup> The most important countries and dates of the bourgeois revolutions and the victory of the bourgeoisie were: England 1640, USA 1776, France 1789, Hungary 1848, Russia 1917, etc. etc. See more about this: Embourgeoisement - Wikipedia (wikipedia.org) Retrieved 2023.07.13.

<sup>4</sup> The classic division of powers between the three branches of power is linked to the work of Charles-Louis de Secondat Montesquieu (1689 – 1755), French jurist, philosopher and writer. Montesquieu's work in this direction,

that neither can prevail over the other, which is ensured by the harmonious placement of weights and balances of power between the organs of state power.

In the thirties of the twentieth century, the *social (legal) state appeared*, which already pays special attention to the education, health status and social security of citizens. Some authors go even further and define the tasks of the state by calling the state of the second half of the twentieth century a "*social intervention state*". As an example, H. Kriesi said that the main tasks of the social intervention state are: managing the functioning of the economy, improving the social situation of the population, providing opportunities for capital investment, supporting scientific technical research, supporting vulnerable (economic) sectors, producing goods not undertaken by the private economy.<sup>5</sup> (Kriesi, 27-29. 1980.)

With all this, we merely wanted to point out that *the tasks of the state were constantly changing and are still changing*, but on the one hand this never automatically meant the cessation of previous tasks, and on the other hand this change pointed and points specifically in the direction of the *expansion of state tasks*.<sup>6</sup> It is therefore no coincidence that "..... our days .... In his way of thinking, the requirement for a smaller and more modern state is almost everywhere."<sup>7</sup> After this, the question rightly arises whether the *tasks of the modern state can be summed up*, that is, whether some kind of catalogue of state tasks can be prepared. Our answer to that is yes. However, with the restriction that the answer is not static, but dynamically variable. Let's look at three examples from the otherwise extremely rich literature:

- According to *Christoph Reinhard*, a distinction should be made between so-called classical tasks, i.e. those guaranteed by the state, and so-called auxiliary tasks, i.e. tasks undertaken voluntarily by the state.<sup>8</sup>

- *Maximilian Wallerath* distinguishes four types of state tasks: primary, political, continuous (routine) and other tasks (auxiliary).<sup>9</sup>

- *Tibor Kalas* distinguishes between the legislature, the administration of public power in society and the judiciary as the most important state tasks based on the functions of the state.<sup>10</sup>

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however, was preceded by the work of John Locke (1632 – 1704), an English physician, philosopher and politician who, in his work entitled "Treatise on Civil Government" (see Hungarian: Thought Publishing House, Budapest, 1986), wrote for the first time about the need to divide state power between legislation and executive.

<sup>5</sup> See KRIESI, Hauspeter (1980): *Entscheidungsstrukturen und Entscheidungsprozesse in der Schweizer Politik*. Die Öffentliche Verwaltung, S. 27-29.

<sup>6</sup> The significant expansion of state and public administration tasks as a trend was already pointed out by Zoltán Magyary when he said in the middle of World War II: "..... All the new tasks which the State gradually undertakes do not mean an extension of the powers and size of the legislature or the judiciary, but all fall within the sphere of public administration." See Zoltán MAGYARY: *Hungarian public administration*. Royal University Press Budapest, 1942, p. 72.

<sup>7</sup> BALÁZS István: *The impact of the changing role of the state on public administration institutions*. Hungarian Public Administration 1992/5, p. 257.

<sup>8</sup> REINHARD, Christoph: *Neue Steuerungsmodelle in der Deutschen Kommunalverwaltung*. Die Öffentliche Verwaltung 1994. S. 39 - 40.

<sup>9</sup> See also: WALLERATH, Maximilian: *Aufgaben und Aufbau öffentlicher Verwaltung im Wandel*. Die Verwaltung 1991.

<sup>10</sup> KALAS Tibor: *A közigazgatás kialakulása, fogalma, feladatai*. In: TORMA András (Ed.): *Közigazgatási Jog* 1. Magyar Közigazgatási Jog Általános Rész I. Miskolci Egyetemi Kiadó, Miskolc, 2018. p. 42 - 45.

After reviews in the literature, it is reasonable *to share our own opinion*. We do this without much explanation, because the framework at our disposal only allows us to do so. In our view, therefore, the tasks of the modern state are: to guarantee external and internal security, to provide public services appropriate to the age (including the management of public affairs), to ensure justice, the social, health, cultural and educational needs of individuals and communities, and to ensure the (efficient) operating conditions of the economy.<sup>11</sup>

In closing this chapter, we would like to point out that several authors in the literature - and especially in German literature - raise the need for the *constitutional (fundamental law) representation of some of the tasks of the state*. They usually suggest that this is a reasonable requirement, while acknowledging that it is also a fact that the Constitution can never provide some kind of closed catalogue of state tasks, because, although it is easy to trace their growth, other laws may necessarily be sources of state duties.<sup>12</sup> At the same time, other authors warn of the *danger of constitutionally fixing state duties* (goals). If certain tasks are laid down in the Constitution (Fundamental Law), they are thereby sanctioned, while all other tasks not specified therein are excluded from this scope. In this way, discrimination against part of the tasks of the state occurs, which can lead to conflict in the legal system.<sup>13</sup>

Let us consider these positions and recognise that both positions are defensible. For our part, we consider that each people and nation must decide for itself whether or not to give a tax on state tasks or goals when codifying or amending its own constitution.

## 2. THE CONCEPT OF ORGANIZATION

A decisive change in the life of human society has been brought about by the realization that the maintenance of life and the transformation of nature for the benefit of the human race can only be achieved through cooperation, *concentration and coordination of resources*. In addition to the main activity ensuring the achievement of man-made goals (e.g. the preparation of weapons for killing an animal), there was always a need for an additional activity to ensure the achievement of the goal by harmonizing the conditions. For our part, we call this coordinating activity organization, which became independent at a given stage of social development, about five thousand years ago, with the advent of the state and public administration, so it became the main form of activity of certain people (the bureaucracy). In agreement with *Professor Sándor Berényi*, we believe that the *concept of organization* means purposeful human activity that provides the personal, material and other conditions necessary for achieving the set goals, and then ensures the achievement of the set goals by harmonizing them.<sup>14</sup> So, the *concept has four elements*, which are:

<sup>11</sup> TORMA András: *Tasks of public administration*. Publicationes Universitatis Miskolcensis. Sectio Juridica et Politica. Tomus XX/2. Miskolc University Press, 2002. p. 435 – 452.

<sup>12</sup> See, for example, ISENSEE, Josef: *Gemeindewohl und Staatsaufgaben im Verfassungsstaat*. In: *Handbuch des Staatsrecht III*. 1988. S. 1 - 82.

<sup>13</sup> MERTEN, Detler: *Über Staatsziele*. Die Öffentliche Verwaltung 1993. S. 368 - 377.

<sup>14</sup> BEREMÉNYI Sándor: *A szervezés (az igazgatás)*. In: Berényi S. – Kovacsics J. – Nagy K. (Ed.): *Bevezetés a szervezéstudományba*. Tankönyvkiadó, Budapest, 1987. p. 10.

- We regard organization as *human activity* occurring exclusively between people. Thus, coordination activities relating to the individual's own work (dealt with in praxeology) and activities that do not take place exclusively in human relations (but, for example, between man and machine or machine-machine) are excluded from the concept.

- A key role in the concept of organization is played by the *objective*. All organizing activities are carried out in order to achieve a goal.<sup>15</sup> In the absence of an objective, the meaning of organization becomes empty and the eventual organizing activity becomes a "l'art pour l'art" activity. This statement is not contradicted by the fact that there are companies in society engaged exclusively in organization (e.g. organizing institutions), since their activities are always linked to some other main activity, to its objective, this is why they never "organize for organization."

- *Coordination* is the most important element of the concept of organisation, since it is this activity that links the goal and all other activities carried out to achieve it. In human cooperation, the division of labour, that is, the division of individual activities among the participants, is necessary, and this implies the possibility of individual activities moving away from a common goal. The task of coordination will be to eliminate the contradiction between the goal and the division of labour.

- Finally, the concept of organisation includes the provision of the *personal, material and other conditions* necessary to achieve the objective. This activity is also a plus compared to the main activity, but it is also a necessary part of cooperation. In the case of separate individual activities, the provision of conditions is qualitatively different because it is partially merged with the main activity. As cooperation expands, its role in this area is growing, and since it is a complementary activity closely related to the realization of the goal, we for our part classify it as organizing.

### 3. THE CONCEPT OF ADMINISTRATION

With regard to the concept of administration, we start - somewhat anachronistically - from the relationship between the concepts of organization and administration, given that we have already discussed the concept of organization in the previous chapter. With regard to the relationship between the two concepts, many, many authors have expressed their views. Some say they are synonymous concepts (with the same meaning), others say they are non-synonymous concepts. In our opinion, the correct and most common understanding developed in the literature is to *consider the two concepts as synonymous*. According to this, administration is nothing more than organization, and organization is nothing more than administration.<sup>16</sup> However, it should also be pointed out that, in our view, *organisation is synonymous with administration 'only' in a broad sense*, because in a narrower sense it is situated within the administration, as one of its elements, and in this sense we mean implementation.<sup>17</sup> However, this question already brings us to the *concept of administration*.

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Note: For the concept of administration, see also, for example: HORVÁTH Imre: *Jogi szervezés- és vezetés*. Dialóg Campus Kiadó, Budapest - Pécs, 1998., and also: KALAS Tibor: *Az igazgatás*. In: TORMA András (Ed.): *Közigazgatási Jog Általános Rész I.*, Miskolci Egyetemi Kiadó, Miskolc, 2018. p. 11 – 22.

<sup>15</sup> Note: Objective refers to the assumption of a future outcome in the human brain.

<sup>16</sup> BERÉNYI Sándor: *ibid.*

<sup>17</sup> KALAS Tibor: *Az igazgatás*. p. 13 – 14.

Foreign and Hungarian literature is unified in that administration is not considered as a single act, but as a *chain of different acts (activities)*. However, as to what these acts, i.e. what activities constitute the content of *the administration, the literature on this issue is quite divided. According to Henry Fayol*, one of the founders of French organizational science, who studied managerial work processes in large-scale industrial plants at the beginning of the twentieth century, administration (leadership) is nothing more than the activity of the boss at the head of a manufacturing plant. In his view, to administer is to plan (anticipate), organize, command, coordinate and control.<sup>18</sup> American authors Luther Gulick and Lyndall Urwick basically agreed with Fayol, but added two additional elements to the Fayol definition: Staffing, which is the 3rd element, and Budgeting, which is the last element. As a result of their approach, the term POSDCORB- system was born, which is an acronym combining the initials of the English name of the content elements of administration.<sup>19</sup> The Hungarian László Ladó defined the functions of administration much narrower, since in his opinion the management performing administration has only three functions: planning, organization and control.<sup>20</sup> In contrast to Fayol, Gulick and Urwick, as well as Lado, Tibor Kalas, accepting the concept of Berényi's administration, *divided the content of administration into three main parts, including seven elements*, when he explained that administration can be divided into objectives, so-called preparatory phases and so-called construction phases. Thus, the content of the administration consists of the Objective, the preparatory phase: the collection and processing of information, the planning, the decision, and the implementation phase: implementation (organisation in the narrow sense), coordination and control. Marked as an acronym: OCPDICC, in Hungarian: CITDÓVKE. Professor Kalas calls the combination of all these elements an "*administrative cycle*", referring to the fact that in practice administration is a continuous activity. In doing so, the subject of administration usually has to set new goals, and therefore the content of the administration is constantly repeated until the predetermined goal is achieved. This is expressed in the concept of '*administrative cycle*'.<sup>21</sup> For our part, we partially agree with the authors cited, but we only accept Tibor Kalas's position in its entirety.

#### 4. THE CONCEPT OF PUBLIC ADMINISTRATION

Having clarified what is meant by the concepts of state, organisation and administration, in order to lay down the dogmatic foundations, we still need to describe the *concept of public administration*, since public administration, as is clear from its name, is indeed administration. Namely, the administration and administration of a given community as a state, that is, the "public affairs".

In recent centuries, especially in Europe, but also in the United States in the twentieth century, countless authors have expressed their views on the concept of public administration and its essential characteristics. In some cases they were diametrically

<sup>18</sup> Henry FAYOL: *Administration industrielle et générale*. Paris, 1916. p. 43.

<sup>19</sup> GULICK, Luther H. and URWICK, Lyndall F.: *Papers on the Science of Administration*. New York, 1937. p. 127 – 143.

<sup>20</sup> LADÓ László: *Szervezélmélet és módszertan*. Közgazdasági és Jogi Kiadó, Budapest, 1980. p. 76.

<sup>21</sup> KALAS Tibor: *Az igazgatás*. p. 16 – 19.

contradictory, and in other cases they reached very similar results.<sup>22</sup> Within the framework of the present work, we do not consider it appropriate to describe the individual positions in detail, but we do note that the authors of the *concept of public administration can be divided into three main groups*. Those who come from the negative side, those who have a positive side, and those who combine the achievements of both sides in some kind of complex concept.

According to the authors on the *negative side*, public administration is such a complex and complicated phenomenon that it is only possible to determine what does not qualify as public administration among state activities. A typical figure of this view is the German *Otto Mayer* (1846 – 1924), a representative of administrative jurisprudence, who stated that "public administration is any action of the state that is neither legislature nor judicial."<sup>23</sup>

*Positive approaches* usually focus on the organizational side or function (activity). As an example, two concepts of Professor *Tibor Kalas*, already quoted earlier, can be mentioned - the concept of organizational science and the legal science of public administration. In organizational terms, i.e. from the *organizational point of view*, public administration is nothing more than "a separate subsystem of state organs, which organizes the practical implementation of the will of the state, with a professional apparatus, covering the whole of society."<sup>24</sup> *The function-oriented*, jurisprudence approach focuses on power-sharing activity. According to it, public administration is "the operative activity of bodies established for the implementation of laws adopted by the supreme representative body, carried out in the possession of public authority and within the framework of legislation." (Kalas, 38. 2018b.)

The authors, who sought to balance the necessarily one-sided nature of negative and positive approaches, created a *complex concept of public administration*, from which we highlight the position of *Professor András Zs. Varga*. According to it, public administration is "the activity of the executive power, as a result of which it effectively influences the conduct of members and organizations of society, namely through the preparation, decision, implementation and control of decisions carried out in the possession of state public authority (*imperium*), through the application of law (enforcement), organization and participation in legislation by a separate state organization." (Varga, Zs. A., 90. 2017.) *In our view*, the concept of public administration should be approached from a *positive point* of view, because a negative approach says

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<sup>22</sup> The differences and contradictions between the different definitions are (were) due not only to the functioning or different points of view of the given authors in different historical periods, but also to the fact that languages are often unable to designate the state activity that is identical in content with a single word or a single phrase for social or cultural historical reasons. As opposed to English and Hungarian,... The Eskimos are said to have twenty-five words to describe the concept of snow. Apparently, this people living in the snow-covered tundras of the Arctic ... Specifically, its survival depends on its ability to express the dozens of shades of meaning for which we have a single word. This is also the case with the American term "Public Administration", for which there is not a single Hungarian word, or ... There are only several words that can be used to express its content: public administration, state administration, specialized administration, and the list goes on..." Richard J. STILLMAN: *Amerikai közigazgatás magyar szemszögből*. In: *Közigazgatás* (Ed.: R. J. Stillman) Osiris - Századvég Kiadó, Budapest 1994. p. 7.

<sup>23</sup> Otto MAYER: *Deutsches Verwaltungsrecht*. München, 1924. S. 7.

<sup>24</sup> KALAS Tibor. (2018): *A közigazgatás kialakulása, fogalma, feladatai*. In: András TORMA (Ed.): *Közigazgatási Jog Általános Rész I.*, Miskolci Egyetemi Kiadó, Miskolc, 2018. p. 36.



nothing about the essence of public administration in substance and content. On the positive side, *the concept can be approached according to several aspects*, but these can necessarily lead to only partial results, precisely because of the necessarily one-sided nature of the given aspect. Therefore, *it is justified for us to create a complex concept* based on the results of different aspects. So let's first examine what the essence of the concept of public administration is according to the five aspects we consider to be the most important, and then, as a result of summarizing these, let's create a complex concept of public administration.

◆ From the point of view of the *imperium* (state power): *public administration is an independent branch of government*. Public administration, in a democratic state governed by the rule of law based on the division of state powers, means the executive. In this sense, *public administration is an independent branch of state power*, alongside legislative and judicial powers.

As for the development of the theory of separation of state powers, the literature is not uniform. We have already referred to the work of J. Locke and Montesquieu in this regard. but here, and now, we point out that it was rather *John Locke*, born in 1632, who, above all, in his "Treatise on Civil Government," published in 1679, laid the foundation for the theory of the division of powers. When, for example, in this work he writes: "The great and main purpose for which men unite into states ... protecting their property. In the state of nature (i.e. when there was no state), several things are missing for this. *First*; There is no valid, fixed, and known law that has been adopted by mutual consent and from which it is recognized that the measure of good and evil ... *Second*; There is no known and unbiased judge who, in accordance with the laws in force, can decide all disputes with authority ... *Thirdly*; *there is no power* to establish and support a correct judgment and ensure its proper execution..."(Locke, 126-127. 1986.) Locke later wrote: "... in a well-furnished state ... There can be only one supreme power, the legislature, to which all others are and must be subordinate ... But since the laws ... They have permanent validity, they must be constantly applied, hence there must be a *constantly functioning power* that provides for the ... law enforcement. And so they often separate the legislative and executive powers." (Locke, 142-143 and 145. 1986.)

Of course, it must also be recognized that *the separation or separation of state powers in nation-states is quite relative. In fact, the emphasis is not on its separation, but on the relationship between the institutions representing the branches of power*, on a system of checks and balances through which "... Every branch of government is motivated and capable of preventing abuses and missteps by another branch of government. Only in this way is it possible ... to prevent all power - legislative, executive and judicial - from being concentrated in one hand, in which ... (the framers of the U.S. Constitution) saw the essence of tyranny." (Rosenbloom, 38-39. 1994.)

However, the model based on the separation of powers or such separation of powers "... The force of inertia shifted in the direction of permanence. Over the past century (read: the nineteenth century), the United States has tried to solve this problem by developing a vast administrative apparatus... This phenomenon is commonly referred to as the "rise of the administrative state" and is hardly confined to the United States. In this country, however, it aims to reduce the inertia of a system based on separation of powers. *In essence, all three government functions can be found in public administration*. Officials of the administration make decrees (legislature), execute and enforce them (executive

function), assess their application and execution (judicial function)." (Rosenbloom, 39. 1994.)

◆ *In organic terms, public administration is a separate subsystem of state organs.*

The public administration that ensures the preparation and implementation of laws, precisely because it is an independent branch of government, *is a separate subsystem of state organs with public power*. Separation primarily means organizational separation from the other two types of organs of state power, the legislative power and the judiciary.

There are two major types of public administration implementing executive power in a democratic state governed by the rule of law: one is the *state administration bodies* and the other is the *group of local self-governments*.<sup>25</sup> The basic criterion of state administration bodies is direct subordination to the head of the executive power (the President of the Republic or the government), while the basic criterion of local self-government is autonomy, (relative) independence from the head of the executive power. This organizational dependence and independence is fundamentally motivated and justified by the different nature of tasks: state administration bodies perform tasks requiring uniform implementation throughout the country (law enforcement, tax matters, national defence matters, etc.), while local governments manage local public affairs (health, social and educational tasks, settlement management and development, etc.).

◆ *In functional terms: public administration is a specific area of state activity.*

Public administration is not only an independent branch of government and a separate organizational system, but also a *specific area of state activity subject to law*. Béla Grünwald writes about this in his work "The Tasks of Public Administration": "... The state is the largest, most powerful personality. As a personality, it has a will, the organ of which is legislation, and an action, the organ of which is administration."<sup>26</sup> Public administration has a *broader task* - as we saw with John Locke - the execution of established laws. In more detail, to take the practical steps necessary for the attainment of the most important *state objectives usually enshrined in legal norms by the legislative power*, and to organize the practical implementation of the will of the state thus supposed, above all by carrying out executive-operative activities. Executive activity refers to law enforcement and operational implementation (management, supervision, other operational activities such as: planning, financing, etc.), while statutory activity refers to legislation.<sup>27</sup> Given that administration is human cooperation that requires a high degree of rationality, this rational *human cooperation* and action must also be central to public administration. However, given that we are talking here about 'public' administration, it should be pointed out that *rational action is planned and implemented in order to achieve Community objectives*. As

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<sup>25</sup> It should be noted that in the nineteenth and twentieth centuries - initially in the USA, but later also in Europe - bodies appeared that were not established by the state, but nevertheless performed public (administrative) tasks, and even if they were created and entrusted by the state with performing public (administrative) tasks, they cannot be integrated into the traditional administrative structure. There is no doubt that the weight and role of bodies implementing "indirect public administration" (public bodies, public foundations, etc.) is increasing in Hungary as well, but their importance is not yet decisive. See for example: VADÁL Ildikó: *Az indirekt közigazgatási szervekről de lege lata és de lege ferenda*. Magyar Közigazgatás 1997. évi 3. és 4. szám, and HORVÁTH M. Tamás: *A nem hagyományos közigazgatási megoldásának útján*. In: *A brit közigazgatás – Magyar szemmel nézve*. Magyar Közigazgatási Intézet, Budapest, 1994., and BALÁZS István: *A közvetett közigazgatás és az autonóm struktúrák*. Magyar Közigazgatási Intézet, Budapest, 1993.

<sup>26</sup> GRÜNWARDL Béla: *A közigazgatás feladatai I. Kötet*. Franklin-Társulat, Budapest, 1889. p. 1.

<sup>27</sup> See also KALAS Tibor.: *A közigazgatás ... i. m. p. 38 – 39.*

Dwight Waldo puts it: "In public administration as an activity, there is a constant reckoning with the means of optimally achieving community objectives... In view of all this, public administration is nothing more than rational human cooperation aimed at achieving specific community objectives, ... which, as an activity, is aimed at achieving goals and optimizing their achievement."<sup>28</sup>

◆ **In material terms, public administration has specific tasks.**

Another essential element of the public administration or administrative activity outlined above is that *it is always aimed at the performance of specific state (public) tasks*. Therefore, the question arises justifiably as to what are the *specific tasks of public administration* in the modern state, i.e. what are the sectors of state life in which the public administration dominates the presence of the state.<sup>29</sup>

It is a historical fact that, as mentioned in Chapter 1, similarly to state tasks, the tasks of public administration *are constantly changing*, as the factors (circumstances) determining the tasks are also changing.<sup>30</sup> The tasks of public administration in the modern state already encompass the entire sphere of socio-economic life. In our view, these are as follows<sup>31</sup>:

- protection of the society concerned (internal and external),
- shaping and (partially) implementing foreign economic and foreign policy,
- management and supervision of social, health, educational and cultural institutions,
- economic organisation, through the exercise of ownership and public powers,
- the performance of other public tasks not covered by the above points,
- carrying out management, supervision and control activities within the system of public administrations,
- performing so-called internal administrative tasks within the system of public administrations.<sup>32</sup>

Perhaps *the most striking general answer* to the question of the function of public administration in the modern state came from E. Forsthoff, who said that the task of public administration is: "... to have a formative, stabilizing and equalizing effect." (Forsthoff, 3. 1961.) This means that the public administration is obliged to ensure public order and security

<sup>28</sup> DWIGHT, Waldo: *Mi a közigazgatás?* In: *Közigazgatás* (Szerk.: Richard J. Stillman) Osiris-Századvég Kiadó Budapest, 1994. p. 16-27. (Emphasis added by: T.A.)

<sup>29</sup> Only in a "decisive way" because it must also be seen that "... There are no rigid boundaries in any state regarding the tasks and activities of state bodies and the division of tasks between the various branches of power." BERÉNYI Sándor: *A közigazgatás rendeltetése, feladatai*. In: *Magyar Közigazgatási Jog Általános Rész*. Osiris Kiadó, Budapest, 1998. p. 42.

<sup>30</sup> The factors determining the tasks of public administration are: the development of the social division of labour, the development of economic conditions, the development of domestic and foreign policy relations, the method of administration and the level of development of administrative technology. See more about this: KALAS Tibor: *A közigazgatás...* i. m. p. 39 – 41.

<sup>31</sup> TORMA András: *A közigazgatás feladatai*. In: *Publicationes Universitatis Miskolcensis. Sectio Juridica et Politica*. Tomus XX/2. Miskolc University Press, 2002. p. 435-453.

<sup>32</sup> Professor Albert Takács derived public administration tasks from the functions of public administration. He emphasized that compared to the functions of public administration, the task has two distinguishing features. One is that the category of the task is variable and dynamic, while that of the function is essentially constant and static. The other is that the task ultimately means concretizing the function. Having said all this, the author believes that it is justified to distinguish the tasks of public administration according to their orientation, sectoral affiliation, content and subjects. See TAKÁCS A. (1993) p. 9 – 16.

of citizens, equality of citizens and welfare services.

◆ **In personal terms: public administration is an activity of persons with a special status.**

The above peculiarities of public administration justify that *persons with a special status* more or less separate from other workers of society (in Hungary, so-called government officials and so-called civil servants) should carry out executive and operative activities, and ensure the organization of the execution of tasks, thus achieving the community goals set by the legislator (power).<sup>33</sup> We broadly agree with *Professor Berényi* that, in addition to its legal status specificity, public administration is also a highly qualified expert apparatus, which, as a bridge, connects state bodies exercising public power with citizens. Berényi writes about this: "The purpose of public administration is to prepare state decisions. ... The decisions of parliament, the head of state, and the government are prepared by the public administration, which... above all... a concentrated expert apparatus... In modern society... In the decision-making process of public administration, it not only plays the role of an expert organization, but also coordinates draft decisions with various organizations representing society, explores conflicts... and attempts to build consensus. In this sense, public administration is a channel of communication between society and the state."<sup>34</sup> (Berényi, 43-44. 1998.)

◆ **The complex concept of public administration**

*Summing up the above*, we can state that the following elements (factors) form the essential characteristics of the public administration of the modern state in the *complex* concept of public administration. Public administration is:

- an independent branch of government as depositary of executive power,
- a separate subsystem of public bodies with public power,
- the specific field of State activity subject to law: organization, implementation and disposition,
- its tasks encompass almost all areas of socio-economic life,
- its functions are performed by persons with a special status, government officials and civil servants, who, through this activity, form a channel of communication (bridge) between the State and society.

## 5. CONCLUSION

Even though thousands of years have passed since the formation of the state and public administration, there is still debate about such basic concepts as the concepts of state, public administration, organization and administration, which are the dogmatic basis of public administration. In addition to these basic concepts, there is also a debate on the tasks, personnel and regulation of the functioning of the state and public administration,

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<sup>33</sup> The specificity of the legal status is confirmed by the fact that in Hungary a separate law regulates the legal status of government officials (see Act CXXV of 2018 on Government Administration), the legal status of civil servants (see Act CXCIX of 2011 on Civil Service Officials) and the legal status of employees in the private sector (see Act I of 2012 on the Labour Code).

<sup>34</sup> For example, from the rich literature on Hungarian civil servants at the turn of the millennium, see also: TORMA A., (1998), LÓRINCZ L., (2000), FOGARASI J., (2000), and KONTRÁT K., (2001).

which we have not been able to deal with due to the narrow framework available to us.<sup>35</sup> We trust, however, that in the present study we have succeeded in proving the fact of the debates and that it has become clear that the dogmatic foundations of public administration are still not as solid as (possibly) might be expected. We also trust that with the ideas we have expressed, we have contributed – albeit to a small extent – to laying the dogmatic foundations of public administration, as well as to consolidating and further developing them.

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<sup>35</sup> See also: TORMA András: Az állami, a közigazgatási és az önkormányzati feladatokról. In: Ünnepi Kötet Ivancsics Imre egyetemi docens, decan emeritus 70. Születésnapjára (Ed.: Csefkó Ferenc) Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Pécs, 2008. 153–164.

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