

CONSTANCY AND CHANGE IN PUBLIC ADMINISTRATION AND ADMINISTRATIVE LAW

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ABSTRACT: *The connection of public administration and public administrative law to the state is indisputable. Therefore, if the state system changes, then after a longer or shorter time, public administration and public administrative law will necessarily change as well. At the same time, there is no doubt that not infrequently some state and public administrative bodies and legal institutions continue to live. Administrative law is one of the most important branches of law in the legal system of every state, so its changes will necessarily affect society. Based on all these, it cannot be denied that public administration and public administrative law are characterized by both permanence and change. The author reviews these facts and circumstances in the study, embedded in a historical aspect.*

KEYWORDS: *state; law; public administration; administrative law; EU law.*

JEL Classification: *K 00*

DOI: 10.62838/cjjc-2024-0028

We Europeans tend to view and evaluate world events from a one-sided perspective, from Europe alone. Our experience is that people on other continents do the same, so it is natural for us to be Europe-centric. In the issues set out in the title of this essay, therefore, our Europeanism and Hungarianism are undeniably present. We accept this, and we hasten to add that we also recognise the validity of the duly substantiated positions of the inhabitants of other continents. Especially when it is a question on which, at the time, no objective written sources could be found. This is the case, for example, with the formation of the state.

In the first chapter, the following discussion will focus on basic concepts that are widely known, such as the development and concept of the state, public administration and administrative law. We believe that knowledge of their content is essential to the development and understanding of what we are saying. We shall already refer here to some of the characteristics which are evidence of the permanence and changes in the State and public administration. However, we will discuss these features in detail in the second chapter and conclude the paper with some final conclusions.

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1. BASIC CONCEPTS

From the list of basic concepts, it can be concluded that these are concepts used in political science and law, the content of which is far from definitively fixed in the past centuries, but at least it is controversial.¹ Due to the limited framework available, of course we cannot present every point of view, but it is justified to record what we mean by the given concept. After that, we can take stock: has permanence or change been characteristic of the given concept in the past decades, centuries, and millennia.

1. 1. Formation and concept of the state

As the **Hungarian Legal Lexicon** puts it, the origin of the state can be traced back to historical reasons.² So, the state has not always existed in the history of mankind, and many theories about its creation have come to light. One of them is attributed to **Roman Herzog**, who links the formation of the state to „...the power exercised by one person over other people” and to the functioning of „...a permanently established power organization” in which offices and officials operate.³ And when asked what are the basic reasons for the state's existence, Herzog mentions two essential circumstances: defense against external enemies and/or a widely built and strictly controlled administration around the procurement and distribution of large amounts of water.⁴

Renate Mayntz approaches the question from a slightly different angle, according to whom the creation and genesis of the various social subsystems - such as legislation, public administration and the judiciary - „... can best be understood if we conjure up the image of a less differentiated society in our imagination. The basic institutions of such a society are much more familiar, ... while the family relationship itself mostly means an economic community... and a cultural community as well. And the public administration itself - behind the cloak of household administration - remains hidden.”⁵ Let's face it: he is right, because - at least in part - the formation of the state and public administration is really to be found here, in family (blood and clan) ties. Among the factors that played a role in this process, according to Mayntz, two should be highlighted. „In the first place, we have to mark the centralization of power within a given region..., which means that only one level of power has the legitimacy to secure the political community from the outside and to use violence to maintain order.... The centralization of power also includes the monopolization of legislation by the central power.” The second essential circumstance to be mentioned among the prerequisites for the formation of the state and public administration is „...the need to jointly fulfill certain long-term tasks.”⁶ Examples include the development of

¹ Note: it is a historical fact that while public administration (implementation) is as old as the thousand-year-old state, we can only talk about administrative science about two hundred and fifty years ago, from the work of the German professor Robert von Mohl (1799 – 1875). He was the founder and most important representative of the first school of administrative science, the school of administrative law. His main work was published in 1829 and was entitled „Das Staatsrecht des Königreiches Württemberg”.

² Jogi Lexikon. (Főszerk.: Lamm Vanda és Peschka Vilmos). KJK-KERSZÖV Kft., Budapest, 1999. p. 23.

³ Roman Herzog: Ősi államok. A hatalomgyakorlás eredete és formái. Corvina Kiadó, Budapest, 1999. pp. 9. 10.

⁴ Roman Herzog: w. d. pp. 259 – 262.

⁵ Renate Mayntz: A közigazgatás kialakulása. in: Közigazgatástudományi Antológia. II. Kötet (Szerk.: Lőrincz Lajos) Államigazgatási Főiskola, Budapest, 1994. p. 95.

⁶ Renate Mayntz: w. d. p. 96.

advanced irrigation systems in Mesopotamia and China, or the construction of the pyramids in Egypt.

An examination of the works of R. Herzog, R. Mayntz and other authors shows that, according to the majority view, **the state** is nothing more than a permanent community of people living in a specific area, under a single (common) main authority, **which has three essential characteristics**: the state-territory, population and sovereignty.⁷ And in the formation of the state - at least here in Europe - the appearance of private property most likely played the main role, which **John Locke** describes in the following way: „protecting their property. In the (prior) state of nature, several things are missing for this.”⁸

Conclusion: regarding the formation and concept of the state - at least from a formal point of view - the signs of permanence are significantly stronger than those of change. In the case of the states established long ago and recently, practically the same characteristics can be identified as those we referred to above. It is a different matter that in the course of human history there have naturally been significant changes in the way the state was organized, compared to the beginnings in ancient times (3000 BC - 476 AD), the Middle Ages (476 - 1492), the modern age (1492 - 1914) and the most recent era (from 1914 to the present day). Even within these eras, aligned with some significant historical events, possibly persons and inventions.

1. 2. Development and concept of public administration

In recent centuries - especially in Europe, but in the XX already in the United States in the 20th century - countless authors expressed their views on the development of public administration and its essential characteristics. In some cases, these directly contradicted each other, and at other times they reached a very similar end result. According to our point of view, the formation of the public administration could have happened as follows, and by its concept we mean the following.

Regarding the development, we start from the fact that public administration is tied to state existence, since public administration cannot exist without a state. In particular, the history of ancient, but also medieval and modern societies (states) proves that there were - usually - **four prerequisites for the development of public administration**:

- with the appearance of private property, the division of society by ethnicity (blood) was replaced by the division according to wealth,
- in the life of the society, the division according to the geographical area was realized, i.e. the dream area was divided into smaller units,
- writing was invented, and a literate clerical apparatus was formed to protect property interests,
- the official apparatus was entrusted with the reigning public power, so the apparatus could make decisions and, in the absence of voluntary compliance, could ultimately be forced by appropriate means of coercion.⁹

⁷ Jogi Lexikon. (Főszerk.: Lamm Vanda és Peschka Vilmos). KJK-KERSZÖV Kft., Budapest, 1999. p. 24.

⁸ John Locke: Értkezés a polgári kormányzatról. Gondolat Kiadó, Budapest, 1986. p. 126.

⁹ Kalas Tibor: A közigazgatás kialakulása, fogalma, feladatai. In: Közigazgatási Jog 1. Magyar Közigazgatási Jog Általános rész I. (Szerk.: Torma András). Miskolci Egyetemi Kiadó, Miskolc, 2021. pp. 25-54.

Regarding the concept of public administration and its essential characteristics, the most important characteristics of public administration can be explored from the point of view of empire, organization, activity, function and personnel. That is why we will try to define public administration by taking these aspects into account.

A.) From the point of view of the empire (state supreme power), public administration is an independent branch of power, alongside the legislative and judicial powers.

According to prominent theoreticians **J. Locke** and **C. S. Montesquieu**, who discuss the necessity of dividing the branches of power, the state power cannot be allowed to be concentrated in one hand, because it necessarily leads to tyranny. As **Locke** writes: „...if the same people hold in their hands both the legislative power and the power to execute the laws, ...then they adapt the creation and execution of the laws to their own advantage and thus their interests, different from those of the rest of the community, and contrary to the purpose of the society... there will be...”¹⁰

As a result of the work of other theoreticians and statesmen following Locke and Montesquieu, it can be established that in a democratic (law) state based on the division of state powers, **public administration means the executive power**. The branch of government that prepares the laws and then ensures the implementation of the created laws. In this sense, public administration is **an independent branch of state power**, alongside the legislative and judicial powers.

Of course, it must also be seen that **the separation and separation of the branches of power is quite relative**. In fact, the emphasis is not on separation, but on the relationship between the institutions representing the branches of power: on a system of rights and obligations through which all three branches of power are able to prevent the abuses of another branch of power.

It should also be emphasized that all three functions of state power (government) can be found in the public administration - in a special way. The public administration creates decrees (legislative function), implements and enforces laws and decrees (executive function), and - admittedly, only exceptionally - judges the legality of their application (judicial function).

B.) In an organic sense, public administration is a separate subsystem of state bodies, public administration bodies are integral components of the state mechanism.

The public administration, which ensures the preparation and implementation of laws - precisely because it represents an independent branch of power - is a **separate subsystem of state bodies with public power**, of which two defining types operate in the democratic state: one is the state administrative bodies, and the other is the group of **local governments**.

The basic characteristic of state administrative bodies is direct subordination to the head of the executive power (the president of the republic or the government), while the basic characteristic of local governments is autonomy, (relative) independence from the head of the executive power. This organizational dependence and independence is basically motivated and justified by the separation of state and local government ownership, as well as the different nature of tasks. The state administrative bodies perform the tasks that require nationally uniform implementation (police, tax, national defense,

¹⁰ John Locke: w. d. pp. 142. 143.

etc.), on the other hand, local governments manage local public affairs (settlement operation and development).

C.) In a material sense, public administration is a specific state activity area: basically implementation and provision.

Public administration is not only an independent branch of power and a separate organizational system, but also a special area of state activity assigned by law. Its task, understood in a broader sense: to take the practical steps necessary to achieve the most important state (community) goals, which are usually included in legal norms by the legislative power. More precisely, the organization of the practical implementation of the state's will assumed in this way, above all through the **implementation of executive-discretionary activity**. Under executive activity we mean law enforcement and operative execution (management, supervision, as well as so-called other operative activities, such as: planning, financing), while under authorizing activity we mean legislation. As a result of the fact that administration is human cooperation that assumes a high degree of rationality, this rational human cooperation and action must also be a central element of public administration. The peculiarity of public administration in this respect is that it always plans and implements this rational action in order to achieve community goals. „...in this sense, public administration is nothing more than rational human cooperation aimed at achieving specific community goals, which as an activity is always aimed at achieving these goals and optimizing their achievement.”¹¹

D.) In a functional sense, the public administration has specific tasks that are well separated from the tasks of legislation and the judiciary.

An essential element of public administration and public administrative activity is that it is always aimed at performing specific tasks. So the question arises, what are the specific tasks of the public administration in the modern state?

Assuming that these tasks are constantly changing - since the circumstances that determine the tasks also change - the **administrative tasks in the modern state are designated as follows**: economic organization, institutional management and supervision, policing and internal protection, external protection, foreign economic and foreign policy tasks, and performance of internal management and administration tasks.¹² By the latter, we mean the management of the entire organizational system of the public administration, as well as its legal and efficient operation.

E.) In a personal sense, the public administration consists of persons with specific legal status: some of them are the workplaces of officials elected by the population, while others are the workplaces of persons dealing with administration as a profession.

The specificity of public administration indicated in the four points above justifies that persons with special legal status, more or less separated from other workers of society: **elected officials, government officials and civil servants**, carry out the decision-preparation, organizing and executive-ordering activities. They should also ensure the organization of the practical implementation of state tasks, and thus the achievement of community goals set by the legislature (authority).

¹¹ Dwight Waldo: Mi a közigazgatás? In: Közigazgatás-tudományi Antológia Első Kötet (Szerk.: Lőrincz Lajos) Unió Kiadó, Budapest, 1994. p. 21.

¹² We will detail these tasks later!

In addition to the four characteristics under points A-D above, it should also be emphasized that the public administration is a **strongly concentrated expert apparatus**. It coordinates draft decisions with various organizations representing society, explores social conflicts, and attempts to resolve them peacefully. In this sense, public administration is a communication channel between society and the state.¹³

Conclusion: in relation to the formation and concept of public administration, we can practically say the same as what we have already described about the formation of the state. It is also clear here that - in a formal sense - **the signs of permanence are significantly stronger** than those of change. In the case of the public administration of the states established in the past and in the recent past, practically the same characteristics can be identified as those referred to above. This is true, even for the tasks of public administration - see the functional aspect approach under point D. - because the new and newer tasks can most likely be classified as one of the public administration tasks listed there.

1. 3. Development and concept of public administrative law

Earlier, we wrote that public administration has been present in the life of humanity for thousands of years, since it is as old as the state. It was always necessary to ensure the preparation of the decision of the leader of the society and the implementation of the decision(s) made. However, in the case of the science of public administration and public administrative law as an independent branch of law, this history of thousands of years cannot be said with certainty, since the science of cameralistics, which can be considered as an antecedent, only dates back to the 17th century. appears in the century. The founder of the first school of public administration, the school of public administration jurisprudence, was the German **Robert von Mohl**, which was founded by his book „Das Staatsrecht des Königreiches Württemberg”, published in 1829 in the city of Tübingen. And in order to be able to talk about public administrative law as an independent branch of law, the organizational **separation of public administration and judiciary** had to take place within the execution. For example, this took place at the following times: USA 1787, France 1789, Hungary 1869, United Kingdom 1888, etc.

Conceptually, in modern legal systems, administrative law is a branch of law that forms **part of public law** and regulates the organization and personnel of the public administration, as well as the social relations arising during the operation of the public administration, basically using the method of subordination. From the definition, it can be concluded that the regulatory subject of administrative law is extremely broad, in essence it encompasses an extremely significant range of socio-economic relations, therefore it can be considered without a doubt **the largest branch of legal systems**. It follows from this that it is connected to practically all branches of law in some way and to some extent, but it is particularly strongly connected to constitutional law and financial law.

The internal structure of administrative law in Hungary was explored and elaborated by **Kálmán Csiky**, when he distinguished between its general part and its special part. According to his point of view, the general part applies to the public administration as a whole - its organization and personnel - while the special part only applies to one branch

¹³ Berényi Sándor: Az európai közigazgatási rendszerek intézményei. Rejtjel Kiadó, Budapest, 2003. p. 73

of administration - for example, the forestry administration or the poor case.¹⁴ It should be emphasized that all of these also apply to today's public administrative law, and all Hungarian law universities basically teach this branch of law according to these aspects.

Conclusion: in relation to the development and concept of public administration law, we can practically say the same as what was described above, in the development of public administration. Here, too, the signs of permanence are **significantly stronger** than those of change. In the case of the public administration of the states established long ago and recently, practically the same characteristics can be identified in relation to the formation and concept, as we referred to above.

2. STABILITY (CONSTANCY) AND CHANGES (CHANGES) OF PUBLIC ADMINISTRATION AND ADMINISTRATIVE LAW

The creation and genesis of the various social subsystems - such as legislation, public administration and the judiciary - „... can best be understood if we conjure up the image of a less differentiated society in our imagination. The basic institutions of such a society are much more familiar, while the family relationship itself mostly means an economic community... and a cultural community as well. And the public administration itself - behind the cloak of household administration - remains hidden.” - writes **Renate Mayntz**.¹⁵ Let's face it: he is right, because the formation of state and public administration is to be found here, at least in part, in family (blood) ties. Among the factors that played a role in this process, two should be highlighted. „In the first place, we have to mark the centralization of power within a given region..., which means that only one level of power has the legitimacy to secure the political community from the outside and to use violence to maintain order.... **The centralization of power** also includes the monopolization of legislation by the central power.” The second essential circumstance to be mentioned among the prerequisites for the formation of the state and public administration is „...**the need to jointly fulfill certain long-term tasks**.”¹⁶ Examples include the development of advanced irrigation systems in Mesopotamia or the construction of the pyramids in Egypt.

We put all of this forward because we wanted to prove it: the centralization and control of state power, as well as the need for joint performance of certain long-term tasks, are undoubtedly evidence of the stability (unchangeability) of the state and public administration. It is clear that these two factors did not only play a role during the formation of the state and public administration, i.e. in the beginning, but also later, in the Middle Ages and today!

There can be no doubt that the tasks of public administration have changed from time to time in the course of history, as the tasks of the state and the factors determining them have also changed.¹⁷ That is why, before **listing the administrative tasks** item by item, it is necessary to examine what facts and circumstances had (are) affecting the tasks of the public administration.

¹⁴ Csiky Kálmán: A magyar állam közigazgatási joga. Budapest, 1888.

¹⁵ Renate Mayntz: w.d. p. 95.

¹⁶ Renate Mayntz: w.d. p. 96.

¹⁷ For the centuries-long continuous transformation of public administration tasks and its organization in Hungary, see Andor Csizmadia: The development of Hungarian public administration from the eighteenth century to the establishment of the council system. Academic Publishing House, Budapest, 1976.

2. 1. Factors determining the tasks of public administration

The tasks of the public administration can be derived from the purpose of the public administration, which was previously indicated in the preparation and implementation of the decisions of the legislative body. Basically, therefore, the administrative tasks are formally limited by the legislative activity. However, if we move further along the chain of cause-and-effect relationships, we find that legislation is also a determined activity, it is limited by the functions of the state and, through this, the goals of the state. Therefore, in order to explore the content of public administration tasks, we must start from the **state functions** related to the goals of the state, which we have already discussed.

The relationship between state functions and public administration tasks also follows from the purpose of public administration. We have to understand public administration tasks as part of the state-wide activity that implements state functions, since individual functions can only be fully implemented with the operation of the entire organizational system of social governance. The public administration may not acquire the exclusive enforcement of any state function, because then the balance of the branches of state power would be disrupted in the given function. Therefore, the public administration implements state functions together with other state bodies. **The functions of the state are generally stable over a long historical period**, essentially unchanged, however, at least five influencing factors play a role in what specific tasks they represent for the public administration in a given period. Namely the following: the development of the social division of labor, the development of economic conditions, the development of domestic and foreign political relations, the methods of the subjects of public administration, and the development of administrative technology.¹⁸

a.) We named **the development of the social division of labor** as the first fundamental influencing factor. This is the basis of the structure of the activities that sustain society, and through this, the composition of the administrative organizations and tasks related to each group of activities. For example, individual economic sectors and sub-sectors are formed as a result of the division of labor found in the economy. Industry, trade, agriculture, etc., and within industry, heavy industry and light industry, within heavy industry, mining and metallurgy, etc.. All of this naturally affects the organizations that manage the individual activities and their tasks. At a given time, the structure of the main authorities is determined based on these, as an objective factor, the development of the social division of labor. In a society where, for example, nuclear energy is not used or space research is not carried out, there is of course no need for public administration bodies with such responsibilities.

b.) Another influencing factor closely related to the social division of labor is **the development of economic conditions** in the given period. As a result of deteriorating economic conditions, more and more public administration tasks arise in order to fulfill the social function of the state. In this case, expanding care for the impoverished social strata, dealing with the problem of unemployment, curbing increasing crime, etc. appear as an expanding social task. All these are of decreasing importance in the period of

¹⁸ Torma András: A közigazgatás feladatai. In: Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica. Tomus XX/2. Miskolc University Press. 2002. p. 435.

economic recovery and a balanced standard of living, thus less and qualitatively different from the public administration. require the performance of a task.

c.) The development of **domestic and foreign political conditions at a given time** is an objective influencing factor for public administration tasks. The favorable development of domestic political conditions, the reduction of internal tensions, the acceptance of state goals by the majority of society, the security of the state and the maintenance of public order and public safety may result in a quantitative and qualitative reduction of public administration tasks. Otherwise, however, these tasks will come to the fore. Foreign policy factors: the increase in international tension or the development of war conflicts also have a significant impact on the development of external defense and public administration tasks arising from international cooperation functions. The easing of international tensions naturally has the opposite effect on public administration tasks.

d.) We identified **the methods of public administration** as an additional factor influencing its administrative tasks. Within this, the circumstance of the depth and content of the management activity the subject of the administration wishes to apply to the administered organizations is of fundamental importance. Looking at it from the other side: the quantity and quality of the tasks of the public administration depends on the independence of the organizations managed by the management. If the controlled organizations have a greater degree of independence in terms of making their decisions and implementing them, then the organizational management (influencing) activity of the authority that controls it will decrease proportionally. This connection is particularly noticeable in the case of administrative tasks arising from economic functions. If in a society the state provides little autonomy to the subjects performing the management, i.e. it also determines the internal conditions of the management through its organs, then it must build a wide administrative apparatus to carry out these tasks.¹⁹ Otherwise, the organizations and tasks of the public administration in the field of economic management will be narrowed, the main function is usually only aimed at creating the conditions for farming.

e.) Finally, but not least, the factor that has the greatest impact on the quantity and quality of public administration tasks is **the development of administrative technology**, or in other words: the incredibly rapid expansion and development of modern information and communication techniques and technologies.

Public administration activity, as **administration**, means the development of **seven elements** - objective, information gathering, planning, decision, implementation, coordination and control - on a societal scale. The activities related to these can be significantly simplified, accelerated, and even automated by using modern administration technology. Administrative technology, especially in the case of information, decision-making and control tasks, is an influencing factor, as follows:

- **Information activity** can be quantitatively accelerated and qualitatively improved significantly by using public administration databases and related data transfer equipment.

- **Some of the decisions** are the so-called programmed decisions can also be made with computers, so administrative processes can be partially automated. As a result, some traditional administrative tasks, such as decision preparation, decision-making, data recording and administration (filing, document storage, etc.) will change, and the

¹⁹ Note: This is what happened in Hungary, which was building socialism, in the 1950s and 1960s!

personnel of the apparatuses can devote their energy to substantive tasks instead of administration.

- **Control** is also an informational activity, since it is nothing more than obtaining information about the result of the implementation of the decision. In this area, modern administrative technology can also speed up and improve administrative processes in the area of data collection, recording and transmission. In this way, it becomes possible, for example, to continuously monitor the effectiveness of administrative activities and to reduce periodic on-site inspection tasks.

Conclusion: among the factors that determine public administration tasks, both individually and as a whole, **the changes have** a decisive importance. This means that in the case of all five factors, in contrast to stability and permanence, continuous change is the characteristic, which - as we will see in the next chapter - also has an impact on public administration tasks.

2. 2. Duties of public administration

Practitioners of the science of public administration dealt with the grouping of public administration tasks resulting from state functions - in greater or lesser depth - almost without exception. The grouping criteria show a diverse picture, from which **two possible approaches** emerge.

According to one, we can derive the main groups of tasks starting from the organization of the public administration, distinguishing between central, regional and local administrative tasks, and within the central tasks, governmental and shared tasks, that is, within the territorial and local tasks, municipal and state administration tasks.

The other method of approach starts from the content features of the task, that is, tasks and groups of tasks that ensure the achievement of a common goal form a larger scope of tasks. This method can lead to significantly different results depending on how the common goals are grouped. According to the generally accepted grouping, these common goals can be derived from the functions of the state, since the performance of the main tasks of the public administration, together with the legislative and judicial tasks, is ultimately done in order to enforce the state functions. Based on the previously detailed state functions, public administration tasks can be divided into the following seven main tasks and task groups:

A.) The scope of the **economic organization tasks** of the public administration **can be divided into two large groups of tasks:** the performance of public authority and owner tasks.

a.) Within the framework of the public economic organization task group, public administrative bodies define the management environment, the limits of economic activity, and the limits of the economic organization tasks of public administrative bodies within the legal framework, through legislation, i.e. in a normative manner. Examples of these are government decrees in the areas of price regulation, licensing and sanctioning. The other part of the scope of public authority duties consists of the official law enforcement duties of public administration bodies. During the application of official law, the public administrative body directly influences the management activity, for example by authorizing, limiting, terminating or sanctioning the activity.

b.) The task group for organizing the owner's economy appears as a public administration task depending on the size of the state property. This task is performed by

the public administration bodies for the purpose of utilizing state assets in the public interest, in a dual capacity. In the framework of ownership management, it creates or terminates economic bodies operating with state participation, and directly owns state assets in the framework of direct ownership activities. The latter can be for the purpose of utilization (sale, capital investment, etc.), can be for the purpose of stimulating farming (provision of loans, subsidies) and can be for the purpose of investment (in the case of individual large-scale investments by the state).

B.) The institutional management responsibilities of the public administration can be derived from the **cultural function of the state**. The implementation of the cultural function is usually not realized by the public administration directly by performing its own tasks, but by creating a network of institutes for this purpose. The name institute means a type of organization in which work activities are carried out, however, the purpose of the activity is not wealth accumulation within the framework of management (as in the case of a company or business), but the so-called performing a non-material service. The cultural function of the state is therefore realized in such a way that the public administration bodies create educational, research, cultural, artistic, etc. responsible institutes, provide them with financial means and manage their activities.²⁰

C.) The social and health function of the state, similarly to the previous ones, is also enforced primarily through the task of managing institutions of the public administration, but in addition to this, in the private sector, professional supervision also takes place here. In this context, we must highlight the official law enforcement activities and tasks related to social and, to a lesser extent, health tasks.

D.) One of the most ancient administrative tasks resulting from the state's **internal defense function** consists of the policing and defense task group.

a.) The duties of public order and public safety, as well as the duties of the fire police, are included in the law enforcement task group. In the case of both tasks, the public administration bodies perform the basic tasks themselves, such as law enforcement, crime prevention and law enforcement for the sake of public order and public safety, and within the framework of the fire police, fire prevention and the actual firefighting task. Of these, actual firefighting is not an administrative task per se, but as a material activity, it is closely related to it.

b.) The defense task group includes the protection of the country's borders, the protection of state security and civil protection. These tasks are carried out by independent, separate organizational systems, which solve actual protection and, to a lesser extent, crime prevention, law enforcement and official law enforcement tasks.

E.) The other most ancient task of the public administration is the **external protection of the state border**, which means the realization of the state's external protection function. This function is provided by the national defense organizational system managed by the highest organs of the state, including the highest administrative organs.

²⁰ It should be noted here that in addition to the institutional management activities of public administration, other organizations also participate in the realization of the cultural function of the state. Especially in the field of education and the arts, there may be organizations that are under private administration or social self-management (church and private schools, arts associations, etc.). In these respects, public administrations only perform tasks of professional supervision, coordination and orientation, which have less influence than management. See more about this András TORMA: The system of relations between public administrations, with special regard to governance and supervision. Hungarian Public Administration, 2004, pp. 449-480.

F.) The **foreign economic and foreign policy task** groups of the public administration can be derived from the international function of the state.

a.) In the foreign economic task group, the basic task of public administration is to create and organize opportunities for international economic cooperation, participate in the work of international economic organizations, and promote the development of foreign trade with economic and official means.

b.) The development of interstate relations, participation in international organizations and the protection of the interests of citizens residing abroad can primarily be included in the foreign policy task group. In the most important matters, these tasks are carried out jointly by the highest representative body, the highest bodies of the public administration, and the foreign representative bodies.

G.) Finally, it should also be mentioned that the public administration has not only the above-mentioned tasks directed outwards towards society, but also **tasks directed inwards towards the organizational system of the public administration**. These can be summarized as internal management, supervision and control tasks. The so-called also internal administrative tasks, which represent the circulation of case files within a specific public administrative body, from filing to the disposal of documents.²¹ A detailed discussion of these goes beyond the framework available to us.

Conclusions: we saw previously that the factors determining public administration tasks were **characterized by changes** both individually and as a whole. We already referred to the necessarily changing nature of the tasks, and as we also saw in points A - G, this is actually the case. It is therefore clear that public administration tasks are characterized by change as a whole!

2. 3. Stability and immutability of public administration from a Hungarian point of view

From what has been said, it may seem that, with the exception of the starting point, both public administration and public administrative law are characterized by change and only change. Human society was and is in a state of continuous - although by no means unidirectional and not even - change, which necessarily affected public administration and public administrative law. **Zoltán Magyary** describes it in the following way: „The territory, the people and the economic opportunities are different in every state and in every age. The tasks of the public administration can only be determined from time to time with the help of these factors as coordinates.”²²

However, this is „merely” an appearance, as there are principles, basic principles and legalities that ensure stability and immutability in the state organization and, as a part of it, in the public administration in the face of change. In appropriate cases, not only with regard to public administration and administrative law, but also with regard to the legal system as a whole. Moreover, since Hungary became a member of the European Union in 2004, it is obvious that the possible obligations arising from it must also be examined, since EU law takes precedence over the provisions of member state law.²³

²¹ TORMA András: Az ügyintézés és a közigazgatási munkafolyamatok modellezéséről. in: Publicationes Universitatis Miskolciensis, Series Juridica et Politica, XXVI/2. Miskolc University Press, 2008. pp. 465 – 488.

²² Magyary Zoltán: Magyar Közigazgatás. Királyi Magyar Egyetemi Nyomda, Budapest, 1942. p. 174.

²³ In this regard, the European Court of Justice stated: "According to settled case-law of the European Court of Justice, the Community Treaties have created a new legal order in favour of which States have increasingly

The factors that ensure stability and change are classified into the **following four groups**: the Ten Commandments, organizational and organizational principles, operational principles, European Union principles affecting both organization and operation.

A.) The Ten Commandments

So let's start from one of the oldest writings in the history of mankind, the Ten Commandments. Of course, the successive commandments do not primarily refer to public administration, yet we find at least one whose connection to public administration and administrative procedural law is indisputable. This is **the ninth commandment**, which reads as follows: „**Thou shalt not bear false witness against thy neighbor.**”²⁴ It is clear that the prohibition applies here in general, not in relation to one procedural law, which is confirmed for us by the 2017. XC on Criminal Procedure. Act CXXX of 2016. on the Code of Civil Procedure. Act, as well as the 2016. CL Act on General Administrative Procedures (hereinafter: Ákr.). According to § 64 (2) of the latter, in case of false testimony, the authority can impose a procedural fine, the amount of which can range from ten thousand to five hundred thousand forints.

Since perjury is defined in Art. CXL of 2004 effective before Act (the Ket.), the preceding Act I. of 1981 (the Áe.) and the preceding IV of 1957. tv., was also recognized by our procedural law establishing the first general rules, so this ban obviously ensures the stability of the public administration.

B.) Organizational principles

According to **Zoltán Magyary**, a successful solution to the ever-increasing tasks of the public administration in post-Trianon Hungary can be imagined with the enforcement of the following organizational principles: centralization, decentralization, hierarchy, integration and professional public service.²⁵ For our part, we agree with Magyary, despite the fact that more than seventy years have passed since his work and the social, economic, political and legal system of Hungary has changed radically.

B./1. Therefore, **the principles of centralization and decentralization**, and their ratio, should be included among the organizational principles of public administration. All public administration organizations **need centralization**, since one of the principles of the organization of the state - as we have already mentioned - was precisely centralization, the centralization of state power. On the other hand, **decentralization** means the transfer of state power to the territorial-local level, the typical forms of which - in the modern state - are **local governments and decentralized bodies**. Local governments are not subordinate to each other or to any other state body, that is, their existence and operation are characterized by autonomy. Local governments manage local public affairs autonomously. On the other hand, the basic characteristic of decentralized bodies is precisely the hierarchy, the subordinate-superior order, which ensures the possibility of identical management of the same type of cases throughout the entire territory of the state. See, for example, the police or county government offices.

restricted their sovereign rights. ... The essential features of the Community legal order thus established are, in particular, primacy over the law of the Member States See Case 26/62 Van Gend en Loos [1963] ECR 1963, pp. 1 and 2.

²⁴ Dr. J. Douma: A Tízparancsolat. Iránytű Kiadó, Budapest, 1984. pp. 237-253.

²⁵ Magyary Zoltán: w.d. pp. 103- 136.

B./2. Zoltán Magyary considers the previously mentioned **hierarchy principle** to be an independent organizational principle, which is a relationship between two or more bodies „...in which the superior body has the right to command over the inferior, and the subordinate body owes obedience and responsibility to the superior.”²⁶ It is clear from this definition **that hierarchy means the opposite of autonomy**, just as we saw earlier in the case of the centralization-decentralization principles. However, its importance is at least as great as that of the mentioned principles, I believe that a significant part of the state's tasks specifically requires the operation of subordinate and superior administrative bodies with central, regional and local competence. We consider, for example, national defense and law enforcement tasks, child protection and guardianship tasks, the management of state institutions, and a significant part of public health tasks as such.

B./3. The principle of integration was mentioned as the third among organizational principles, which „...regulates the relationship between public administrative bodies at the same level and is meant to ensure harmony between them.”²⁷ Nowadays, instead of the concept of integration, perhaps the **expression coordination or coordination** can be used, but in terms of content, it is about the same administrative task and activity! On the other hand: the term integration was „seized” after the writing of the Magyary Volume in 1942 by the Treaty of Paris aimed at the unification and unification of Europe in 1951, the Treaties of Rome in 1957 and the Maastricht Treaty in 1992, so today it is more fortunate that coordination and/or using the terms coordination instead of integration.

B./4. The fourth organizational principle was **the principle of professional public service**, which means that public tasks must be performed by qualified, experienced personnel who require permanent employment. Today we say: with persons who deal with public administration as a profession. In other words: In Hungary, the so-called maintaining a closed public service system, the so-called against an open or prey system, where the mentioned criteria are missing.

C.) Operating principles

C./1. The operating principles **ensure that the administrative organizational system operates in a predictable and stable manner**. In this context, the previously mentioned general (authority) procedural rules, **Ákr**.

The **Ákr**. - already at the beginning of the law - it declares what basic principles it expects the authorities and clients to observe in various public administrative matters, which ensures extraordinary stability in the management of official matters, since we must not forget that in Hungary, public administration bodies make decisions on about twenty million individual cases every year! The **Ákr. declares basic principles** for both subjects of the official legal relationship, as follows:

a.) Basic principles burdening the authority:

- the principle of legality,
- the principle of officialdom,
- the principle of efficiency,
- the principle of good faith and the principle of trust
- obligation to cooperate.

b.) Basic principles burdening the customer:

²⁶ Magyary Zoltán: w.d. p. 104.

²⁷ Magyary Zoltán: w.d. p. 104.

- right to make a statement,
- the right of the client and other participants in the procedure to know their rights and obligations during the procedure,
- good faith and obligation to cooperate.

In addition to these basic principles, the Ákr. it also implicitly records basic principles. For example, the client's right to legal remedy or the authority's obligation to provide reasons can be considered as such. The discussion of these - as with the declared principles - exceeds the available framework, so we will not go into detail here.²⁸

C./2. The defining operating principle of public administration in the modern rule of law is **democratic operation**. This has many, many components, among which we highlight **the principles of publicity and transparency**. The former imposes the requirement on public administration bodies that decision-making must be made accessible to the population, that is, decisions must be made „not under the table”, but publicly. The essence of the principle of transparency is similar, with the correction that even the steps prior to decision-making must be made transparent and clear to the citizens. From these it is possible to know who does what during the administration of public affairs.

D.) European Union principles affecting both organization and operation

Continuing our investigation, it can be established that in the history of the European Communities and the European Union, there have been principles that can be classified both as organizational and operational principles. These are decisively linked to the activities of the European Court of Justice and the European Commission, so we divide them in this way. Before that, however, it is necessary to talk about the currently effective Lisbon Treaty, born in 2007, because it also contains the principles indicated in the title, as follows:

D./1. The principles laid down in the Treaty of Lisbon

The principle of **the obligation to cooperate** is a defining principle in the system of relations between the individual bodies of the EU institutional system. It is true that this principle has not yet been stated expressis verbis by the Treaty of Rome, but at the same time, the jurisprudence of the European Court of Justice - in addition to declaring this obligation of the member states - also extended it to the Community institutions. What's more: the Maastricht Treaty went further in 1992 and now established the cooperation obligation of the Council and the Commission as a written norm. According to Article 3 of the Maastricht Treaty: „The Union shall in particular ensure the coherence of its external activities as a whole within the framework of its policies in the fields of external relations, security, economy and development. The Council and the Commission are responsible for ensuring this consistency, and they cooperate for this purpose...” Article 45 of the Maastricht Treaty imposes the same obligation of cooperation on the Council and the Commission. According to this, the so-called on the basis of closer cooperation „...they jointly ensure the consistency of actions, as well as the consistency of these actions with the policies of the Union and the Community, and cooperate for this purpose.”

²⁸ For basic principles, see, for example, Anita Boros- Péter Darák (Ed.): Rules of the General Administrative Code. National University of Public Service, Budapest, 2019, pp. 25-32.

However, **the Treaty of Lisbon created a new situation** in this respect as well, since Article 13 of the TEU - after listing the institutions of the Union in paragraph (1) - states in paragraph (2) that „...the individual institutions within the limits of the powers assigned to them in the Treaties, they act according to the procedures, conditions and goals defined there. The institutions cooperate with each other in good faith and mutually.”²⁹

This provision, however, already leads us in the direction of the other operating principle, the principle of institutional balance, which also did not obtain legal confirmation for a long time, i.e., its elaboration was awaited by the **European Court of Justice**. Of course, the Court „finished the job” and developed the meaning and content of the principle of institutional balance. According to the jurisprudence of the European Court of Justice, this basic principle means that none of the Community/Union institutions can deprive another Community/Union institution of the prerogatives (meaning: tasks and powers) provided by the Treaties. Moreover, in relation to the principle of institutional balance, not only the jurisprudence of the Court of Justice can be called upon to help, but now also substantive law. We have seen that Article 13 (2) of the TEU now establishes in principle that the individual institutions can only act within the framework of the powers assigned to them in the Treaties and according to the procedures, conditions and goals defined therein! It can be seen that the principle of institutional balance essentially means what in the world of national administrative law is called the prohibition of taking away powers.

D./2. General legal principles of the European Court of Justice concerning public administration

From the beginnings of European integration, from the establishment of the European Coal and Steel Community in 1952, that is, in the last seventy years, countless judgments have been issued by the European Court of Justice, which in some way and to some extent deal with public administration. A detailed review and discussion of these goes beyond the available framework, so here we only refer to them as a list. We also point out that - as **László Blutman** rightly points out - the literature is not uniform in compiling a catalog of the general legal principles of the EU legal system, yet there are principles for which there is a general agreement on their classification as „general legal principles”.³⁰ These general legal principles are:

- the principle of subsidiarity,
- the principle of proportionality,
- the principle of legal certainty,
- the principle of equality and the prohibition of discrimination,
- protection of fundamental rights.

László Szegedi approaches the question differently, who makes a distinction between indirect and direct execution (public administration) as a starting point. Accordingly, it divides the basic principles of European administrative law.³¹ Listed only, as follows:

a.) basic principles of indirect enforcement:

²⁹ The Treaty of Lisbon, which was born in 2007 and entered into force in 2009, consists of only seven articles, the first two of which are relevant to our subject. Article 1 sets out the provisions on European Union (TEU) and Article 2 sets out the provisions on the functioning of the European Union (TFEU).

³⁰ Blutman László: Az Európai Unió joga a gyakorlatban. HVGORAC Kiadó Kft. Budapest, 2010. pp. 47 - 50.

³¹ Szegedi László: Az európai közigazgatás fejlődése és szabályozása. Dialóg Campus Kiadó, Budapest, 2018. pp. 25- 34.

- limited delegation of authority and separate levels of installation of authority,
- the relative autonomy of the member states when implementing EU law,
- uniform application (interpretation) of EU law and "collision doctrines".

b.) principles of direct execution:

- rule of law and some of its requirements,
- proportionality,
- the principle of equality,
- the right to proper administration.

D./3. The principles of the European Commission concerning public administration

One of the documents of the **European Commission, born in 2001**, had, has and will continue to have a significant impact on both EU and Member State public administrations. This document is entitled „**White Paper on European Governance**”.³² The main goal of issuing the "White Paper" was to transform the EU's governmental system in order to bring the Union's institutional system closer to European citizens by creating coherence of Community/Union policies.

The European Commission also emphasized that in order to achieve the goal of „Good governance” outlined in the document, it is not enough to transform the work of the Commission alone, but also requires the efforts of the other community institutions, the member and candidate states, as well as their local governments. . The White Book therefore intended to serve as a compass not only for the Commission, but also for other creators and implementers (applicants) of Community/Union law.

The White Paper **fixed the situation of the European Union** as a starting point, referring to both positive and negative elements. Among the positive elements, the Commission highlighted that in the past fifty years, the European Communities have ensured peace and stability, almost uninterrupted economic development, and democratic functioning for Europe. Among the negative (critical) elements, the Commission referred to the fact that, on the one hand, the Union represents - for many - an alienated institutional system, about the functioning of which little is known. On the other hand, the EU does not respond effectively to the changes that have occurred: unemployment, changes in world politics.

After analyzing the situation, the Commission also referred to the solution. He indicated this in the implementation of the **five basic principles of „Good governance”** - openness, participation, accountability, efficiency and coherence - repeatedly referring to the fact that these basic principles are implemented in all community/union institutions, in all it is reasonable to enforce it in member and candidate states, as well as in all local governments. What do these principles mean? The following:

The principle of openness imposes on institutions the requirement that they must operate much more openly (than at present), also in a physical sense. Moreover, they must make it clear to everyone why they do what they do, what decisions they make, and they must communicate this in an appropriate language and in a form that is understandable.

The principle of participation creates the validity of decisions, and also increases citizens' trust in institutions, as it ensures that citizens, as well as various civil and other organizations, have a say in decision-making. It is therefore necessary to eliminate the

³² White Paper on governance | EUR-Lex (downloaded 30. oktober 2024.)

situation where decision-making is exclusively the privilege of the relevant community institutions.

The principle of accountability means that every institution is obliged to explain and make everyone understand why it does what it does, and to accept the consequences of its behavior or omissions.

The principle of accountability means that all institutions are obliged to explain and make everyone understand why they are doing what they are doing and to accept the consequences of their actions or omissions.

The principle of effectiveness imposes three requirements on institutions. On the one hand, the various policies must be implemented at the appropriate time along clear goals, taking into account past experiences and expected future effects (timeliness). On the other hand, the decisions made and the consequences of the decisions must always be proportionate to the set goals (proportionality). Thirdly, that decisions must always be made at the most appropriate level (subsidiarity).

The principle of coherence requires institutions to create and enforce harmony between different areas of cooperation. They must clearly see that the changes taking place in the world are becoming more and more complex, and therefore the responses given to them must also be complex and properly coordinated (coherent).

More than twenty years have passed since the White Paper was issued, so a thorough examination of what has been achieved from what was written would be justified: at the EU, Member State and local government levels. However, the magnitude of this task far exceeds the resources and framework available to us, so we will ignore it here and now.

3. FINAL CONCLUSION

Public administration (execution) is as old as the state, which means that its history goes back several millennia. Its existence is closely related to the existence of the state: there is no public administration without the state! As a result, the task, organization and operation of the public administration has changed, is changing and will continue to change. Still, there were, there are, and there will certainly be principles that ensure the stability and permanence of public administration, since permanence - among other things - means safety in the life of people and society. **Security**, a sense of security, is indispensable in human, state, social and economic life.

In the dissertation, we pointed out which are the facts and circumstances that prove the changes in public administration and administrative law, and which are the ones that prove the sameness and stability. One of the most decisive drivers of the changes is the development of administrative technology and the rapid spread of **modern information and communication techniques and technologies**. It seems that today's exponentially growing, incredibly fast technical-technological development is transforming all areas of socio-economic life, and even private life, so it necessarily has an impact on public administration: its tasks, organization and operation. Exactly how much, where and in what way can be the subject of another study, perhaps a monograph.

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