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The phenomenon of privatization of public professions as one of the elements of political changes in Poland

Introduction

The process of political transformation in Poland involved and still involves various actions aimed at denationalization of many fields of social and economic reality, privatization of certain activities, tasks and functions, which until then had been accomplished within state structures, as well as decentralization, which appears both as theoretically defined territorial decentralization and material decentralization.

Yet, this is not a multipurpose rule. It is necessary to remember that if one takes the existence of state and organization of its structures into consideration than centralization, as well as decentralization, turns out to be logically justified. The situation seems very similar in the case of deregulatory and regulatory tendencies. Certain areas of social life and crucial state issues should be strictly controlled and placed under state surveillance, whereas other do not need to be treated this way. It always depends on the unique sociological and historical context, in which a society leads its life.

Since neither economy nor administration can exist without society, privatization in every country has its own local character. Certain institutions known and existing in certain countries change totally their character when implemented in other countries. It might result in misunderstandings and misinterpretations concerning analysis of certain phenomena. The case of privatization of public tasks and functions is very similar. The phenomenon might be observed regardless of the fact that its major objectives and assumptions remain unchanged, no matter where they are being introduced. In all countries privatization is targeted mainly at cutting administration costs, which might be achieved by reducing width of state administration, optimizing its processes.

The debate about privatization in Poland, which has been taking place for several years already, touches mainly such points as: Should public tasks and functions be privatized at all? Which tasks should be privatized? What will be the results – will the advantages overcome disadvantages in the field of accomplishment of constitutionally guaranteed subjective rights of an individual? How to insure citizen's situation, who is a service taker of privatized tasks or functions?

In this article I would like to discuss privatization in its two dimensions – privatization of public tasks and privatization of professions, which until now have been accomplished within administrative state structures. However, I will not mention the issue of decentralization of public tasks as it is not included in the problem of privatization, although it concerns cession of competence.

Privatization of public tasks involves cession of accomplishment of certain tasks on the basis of a contract between an institution of public administration or an institution of local government and a private subject within its feasibility as well as legal transformation from forms of public law of accomplishment of certain task into forms of civil law.

Privatization of profession involves certain transformations of methods and legal terms of executing the profession. People working in a certain profession stop being employees of the state on posts of clerks or other office jobs and become entrepreneurs working on their own, however the character of professional activities remains unchanged, just the way it was performed before privatization.

Admissibility and reasons for processing privatization

Admissibility of privatization of public tasks depends on many factors. In general the possibility of privatization is based on the type of political system and legal arrangements adopted in a country. The important influence comes from general assumptions on organization of public structures and certain premises deriving from organizational assumption on the state itself. Apart from this, one of essential issues to be discussed in this essay is the problem of admissibility of privatization of public tasks, analyzed in reference with the character and the essence of the tasks. I will try to answer the question what type of public tasks is “fitted” for privatization.

I distinguish two fundamental conditions which the public task must meet in order to be effected outside the structures of the state or local government. Firstly, the legislator may resign from direct executing or performing of those public task which executing can properly – that is without the detriment to public interest or

legally guaranteed interests of the citizens – be carried out outside the structures of public administration organs.

Secondly, privatization can only be effected if the execution of tasks by non-state organizations will be beneficial to the society – or in some cases even more beneficial than previously performed by state or local government organs. Since certain public tasks for the reason of their character should not be executed outside state structures (even if it would result in certain benefits – for example improvement of economic indicators) it is necessary that the both conditions will be met simultaneously. It depends to the great extent on the two conditions where the limits of privatization of public tasks will be set.

According to S. Biernat, privatization is often effected in those areas of state activity for which it is not essential to apply central management and strict centralization of structures or execution of public tasks in hierarchical conditions, because it allows limitations of expansion of public administration structures¹ connected directly with effecting the task, contributes to cutting costs² of execution of certain activity and in many cases it guarantees higher effectiveness³ of performance of a task.⁴ Z. Leoński mentions that privatization is most commonly aimed at taking the load off the state and subjects of public law (especially the territorial self-government) in execution of public tasks and expansion of the apparatus of government.⁵

One of the most common reasons for state's resignation from direct execution of public tasks are economic causes, described often as financial reasons. Transmitting tasks outside state's structures allows savings. By resigning from direct execution of tasks, the state cuts costs resulting from maintenance of its structures, which his uses in effecting the tasks. Though it is important to remember that privatization does not have to be an only remedy.

Having analyzed rules of good administration J. Supernat mentioned the notion of economy of administration functioning. According to the author this is a rule of administration, which determines selection of instruments of administrations activity. Author identifies economy with savings, which is minimizing costs of tasks execution. However in terms of management the notion can be interpreted as aiming at savings, but also in other words targeting at effectiveness. The assumptions are connected with the topic in terms of legislator's reasoning

¹ The state have to have only structures meant for co-ordination and supervision. After the privatization the state can resign from expensive structures which realized this tasks in the past.

² There are obviously, costs bear the state and also total costs of this task.

³ Effectiveness in instance of notariate is for example settle things without delay.

⁴ S. Biernat, *Prywatyzacja zadań publicznych. Problematyka prawna*, Warszawa–Kraków 1994.

⁵ Z. Leoński, *Funkcje, zadania i kompetencje realizowane przez podmioty prawa prywatnego* (theses of the paper), [in:] *Administracja i prawo administracyjne u progu trzeciego tysiąclecia*, Łódź 2000, p. 268.

for introducing the rules, which allow the organs of public administration to pass on execution of public tasks on the basis of a contract. They can also be applied in case of cooperation in tasks execution.⁶

It is however important to remember that in certain legal conditions entrusting a task (or more precisely – privatizing the task) does not result in automatic state's exemption from financing it. The case happens when only process of task's execution undergoes the process of privatization, for example when citizens benefit from services of private subject in effecting public municipal tasks, which still are part of legal obligation of the commune, because this obligation results from legal regulations.

The reasons for passing on public tasks can be approached from A. Wiktorowska point of view. The author distinguishes functional reasons, which can in other words be expressed as adopting, for example administration of health care requires medical expertise. Then the author mentions territorial reasons, which are generally based on passing those tasks which are essential for certain territory where the subject works. Another group are organizational reasons, which generally involve passing the tasks to administering organ with regard to his connection with other organs or subjects. The last group are financial reasons, connected with minimizing the costs.⁷

In some conditions passing on certain tasks to public subjects which are not included in state administration or local government is very beneficial when regarding quality of execution of public tasks. When execution is entrusted to a subject or institution of social or professional activity it allows expertise in tasks completion. Expertise results also in time and effectiveness.

The possibility of privatization of public tasks was also denied in the literature. J. Jabłoński indicated that market evaluation of public domain must be limited. Tendency to privatize public administration might be interpreted as vote of distrust to constitutionalism, which is fundamental to legitimacy of public administration.⁸

A. Błaś expressed at this point his great apprehensions claiming that public administration which is legitimized only with economic value might lead to assumptions undermining the existence of the state. The author dreads the rule “as many public tasks as means”. He claims this is the way for the state to become legal paradox of form of government with diluted state functions.⁹

⁶ J. Supernat, *Zasady dobrej administracji*, [in:] Z. Cieślak, Z. Niewiadomski (eds.), *Prawo do dobrej administracji. Materiały ze zjazdu katedr prawa i postępowania administracyjnego Warszawa–Dębe, 23–25 września 2002*, Warszawa 2003, p. 603 foll.

⁷ A. Wiktorowska, [in:] M. Wierzbowski (ed.), *Prawo administracyjne*, Warszawa 2002, p. 97 foll.

⁸ A. Jabłoński, *Tendencje przeobrażeń administracji publicznej na zachodzie*, [in:] A. Ferens, I. Macek (eds.), *Administracja i polityka – wprowadzenie*, Wrocław 1999.

⁹ A. Błaś, *Z problematyki prywatyzacji zadań samorządu terytorialnego*, Acta Universitatis Wratislaviensis No 2271, Wrocław 2000, p. 36.

I think that results projected in these assumptions were of little probability as the citizens would have expressed their opinions as voters of organizing protests – which in fact was the case. It is important to remember that tax-payer will always be interested in spending his money and he will probably consider the notion of public utilizations of the means with regard to his interest and needs.

Transferring public tasks to private (not included in state structures) subjects' execution may occur also in case of using certain structures existing in certain area. In literature the case is known as territorial reasons of resigning from direct execution of tasks. Yet, in my opinion that this reason can be placed among purposeful reasons.

For example in privatization of notary's profession legislator decided that not all the activities effected by notaries before re-privatization of the profession will be left to their competence and therefore he excluded from the catalogue of professional competence of notaries keeping real-estate registers, which ones was realized within structures of public notary offices. At the moment the function is executed by registered departments of district courts described in ordinance of the Minister of Justice of 12th June 2002 concerning definition of district courts keeping real-estate registers (DzU 02.95.843 changed later). Obviously, it was a right decision, because not all the activities and public tasks are fit for privatization.

Historical context

The privatization of public tasks and professions in Poland would most probably have never taken place, at least in its present form, if it had not been for the transformation of the country's political system. Nevertheless privatization understood as the entrusting of certain functions and tasks outside structures of the state administration and their respective execution is not an entirely new phenomenon. It can be compared to an ancient invention which have been forgotten for a very long time and re-invented in novel conditions and form, but still identical in its essence. My analysis comprises the Polish tradition only, however I think that it is a world-wide trend.

Today's privatization is not an entirely new phenomenon, even though with relation to the organisation of public tasks performance it is reaching its prime. Taking on public tasks, or at least performing certain actions on behalf of the public administration by external subjects, has a long tradition. J.S. Langrod wrote, that on the one hand public services may *ex lege* be subjected to private law in their entire, or partial, activity and, on the other hand, administrative activities take on forms approaching private exploitation or even identical with it.¹⁰ The author presents a certain intellectual abstract concerning both administering a state

¹⁰ J.S. Langrod, *Instytucje prawa administracyjnego. Zarys części ogólnej*, reprint to 1947 ed., Kraków 2003, p. 222.

by means of civil law forms and passing on public functions to private subjects. J.S. Langrod defined subjects that nowadays we would call subjects working in the conditions of privatization – quoting M. Hariou: collaborators of administration. They are – according to the author – entities (private par excellence) located over the borderline between the domains of administration and private entrepreneurship bound to administration with a specific administrative link resulting from all kinds of co-operation.¹¹

The very transfer of public tasks to subjects not belonging to public administration structures occurred, according to Z. Leoński, in the former political system in Poland too. It concerned commissioning of certain functions to various parties and organisations which were not included in the structures of the state. The process led to certain unintended results, as social organisations overburdened with these duties employed professionals, and in consequence instead of inducing socialised performance of a given task there occurred its bureaucratisation.¹² Such process cannot be classified as privatization due to the fact that those practices were justified by the need to provide the so-called “social factor” in administration, therefore it was “socialisation” of administration rather. Nevertheless it did constitute some precedent in the field of the state’s sharing its functions with external parties.

To begin with I will present the problem of privatization of professions immediately pointing to the fact that in many cases the notion of **re-privatization** would be more suitable. This term is more proper as it refers to the return to the condition which existed once in the past. The profession of a public notary was re-privatised.

The privatization of professions concerned (and it still does) professions that in the former system were carried out within the administrative structure of the state usually with public servants’ status or close to it. The reforms of the political system in Poland which were started at the turn of the ’80 and ’90 consisted of the denationalisation of public life in the country. Then the legislator changed the status of certain professions formerly carried out by clerks and officials. After the change they became jobs carried out by private persons without any alternations as to the scope of their duties. They gained the status of public trust professions and became equipped with their professional self-government or the formerly existing self-government got entitled to rights corresponding with its new professional status. The privatization of professions is a specific type of privatization as the privatization of professional duties is just one element of a larger process of transformation. In the Polish legal system it is accompanied by a self-government or it is burdened by a list of public functions. Such organisations have some

¹¹ *Ibidem*, p. 239.

¹² Z. Leoński, *Funkcje, zadania i kompetencje realizowane przez podmioty prawa prywatnego* (theses of the paper), [in:] *Administracja i prawo administracyjne u progu trzeciego tysiąclecia*, Łódź 2000, p. 268.

public and private features and the constitution imposes on them the obligation of assuming responsibility for working in the profession within the boundaries of the public interest, and for the public interest's good. However, it is necessary to emphasise that the privatization, or re-privatization, of professional duties is different from commissioning public functions to a public association like a professional self-government. Obviously in the case of the privatization of the professions of a public notary or of bailiff both processes occurred simultaneously. And yet, when commissioning a notary's duties to private subjects we are dealing with privatization. But when entrusting a professional self-government certain public functions we are dealing with decentralisation. Obviously, apart from performing decentralised duties a self-government carries out its own, corporate, tasks. Nowadays professional self-governments – as far as decentralised functions are concerned – deal mostly with rationing access to their professions. In the case of notaries these functions are limited in comparison with other public trust professions. Self-governments also perform tasks relating to supervision and other jobs enforced by the law.

The transformation of medical professions after the reforms of medical services in Poland may also be considered a type of privatization. This change is not so conspicuous as in the cases mentioned above due to the fact that private medical services existed in the former system as well. Nevertheless, contracts signed by private medical care centres and private practices of doctors are also a sign of the privatization of medical professions, and at the same time of public tasks, even though in case of medical professions the problem has got a larger scope.

Among many types of public tasks privatizations, made possible by system transformation in Poland, the most interesting becomes the problem of commissioning tasks by means of an agreement signed between a public administration unit and a private subject, who becomes a final executor of the task. This type of privatization was provided for cases where certain services or deliveries connected to a public task were to be ensured.

The phenomenon of privatization of public tasks should not be mistaken for the tasks reduction. They are two different phenomena bound to political system models. If a country's system is dominated by the liberal elements, where the state is understood as a night watchman, then the list of public tasks is shorter than the one in a welfare state, which takes its citizens under protection. Poland has chosen a middle way making the principle of democratic country of law one of the basis of its constitution. Immediate passing to pure liberalism was impossible as the society would not bear such a change. A part of the tasks were reduced, which meant that the new legal order did not include them in the catalogue of tasks regulated by the state and another part of tasks got privatised which finally took on various forms.

In general however, independently of the question if a country realises a liberal or a democratic legal model it is not possible in a democratic country to bur-

den private subjects with certain public functions and tasks in substitution of the state, if it meant a total transfer of the burden as well as responsibility for the task. It would be the return to the communist equality, or to the state understood as Robin Hood who takes away from the rich and gives to the poor. In effect, as we have experienced, all become equally poor. As it is difficult to avoid mistakes in the transformation period the Polish legislation did not avoid errors either. Solutions implemented by regulations of an act dated the 21st of June about the protection of tenant rights, about commune housing resources and a change to civil law (DzU 01.71.733 changed later) provided that private owners of houses and flats were burdened with public duties concerning securing social housing needs.

The reduction of public tasks cannot be a limit process without limits. As Poland is a country realising the model of the democratic state of law, it is the positive law that determines the possibility of public tasks reduction. In my opinion the reduction was possible only till 1997, i.e. till the day of passing the constitution. It will also be possible if the rulings of the constitution change. Right now it is only possible to apply many modes to carry out public tasks, including their privatization in many varieties. As A. Błaś noticed: the reduction of public tasks in a country of law has ceased to be an act of political will, it becomes possible only when the constitution and the laws explicitly allow it.¹³ As for maintaining citizens' security in the case of public task reduction the legislator should apply certain protective measures. For example art. 43 to the bill of the 30th of August 1991 about medical services centres (DzU 91.91.408 changed later) states that and act or decree providing for the liquidation of a public medical service centre should specify the way and form of securing that people using certain medical services in the liquidated unit are still provided with the services without essential limit to their accessibility, continuity, conditions and quality of service and that the date of liquidation cannot be earlier than 3 months from the day of issuing the decree or passing the bill.

Social context

A change in the manner of a public task's realisation is invariably accompanied by some social consequences. The same applies to a task's privatization. The consequences are complex and in the Polish reality have two types of implications. Firstly, they concern a citizen as a party interested in certain public services and secondly a citizen who could become a supplier of certain public services and thus gain a new source of income.

¹³ A. Błaś, *Granice prywatyzacji zadań publicznych w państwie prawa* (theses of the paper), [in:] S. Michałowski (ed.), *Samorząd terytorialny II Rzeczypospolitej. 10 lat doświadczeń*, Lublin 2002, p. 306.

At first I will analyse the situation of the citizen-service taker. It is still disputed if the rights of a citizen expressed in the constitution are just declarations or the regulations written in the constitution are norms which impose certain duties upon the country's authorities. The two extreme of the debate are occupied by L. Garlicki on the one side, who maintains that they are just "legal reflexes" with L. Balcerowicz who states that social rights are just empty, window-dressing pseudo-laws not subject to execution¹⁴ and A. Błaś on the other side who claims that the norms induce subject rights for a citizen. Nevertheless, in the situation when a bill's regulation explicitly determines an administrative body's legal duty to act in a specific way it means that if the regulation creates obligation of providing services to citizens, the citizens, making things somewhat simplified, may claim their rights to the administrative body.

A change in the way of a task's performance may lead to the limiting of a citizen's rights, which are guaranteed by the law. According to A. Błaś, private subjects that deliver public services base their operations on an economic calculation taking into account their expenses and the profitability of their business. Public administration subjects base their operations on the logic of the mission that authorities and the state have with relation to the citizen. The mission is expressed in the state's and authorities' functions determined by the constitution, which amounts to the protection of citizens and fulfilment of needs which exceed the abilities of individuals and associations. The mission of public authorities in a democratic state of law is to satisfy the requirements which cannot be satisfied on individual level protection, satisfactory living conditions and of cultural nature. They are universal needs as their scope and content may be altered, but not their character. They are fundamental tasks, inalienable functions of the state and local self-government.¹⁵

In my view privatization encompassing areas in which changes are directly noticeable by the citizen should be carried out in such a way that the citizen does not suffer from any detriment to his rights expressed in the positive law. It is obvious that the citizen feels differently about the privatization of the notary's job and the privatization of tasks connected to medical services which include changes in the ways the services are financed. As for the legal situation of the citizen it is actually meaningless if a legal act is prepared by a notary who is a public clerk employed by local authorities or he is a private entrepreneur working on his own account.

Privatization, similarly to all other reforms in a country, should be prepared and carried out with precision. It should not be clumsy. Clumsy privatization means that due to insufficient preparation or financing, false guidelines or assumptions as to social or political situation, it turns out necessary to return to pre-

¹⁴ L. Balcerowicz, *Wolność i rozwój. Ekonomia wolnego rynku*, Kraków 1995, p. 38.

¹⁵ A. Błaś, *Z problematyki prywatyzacji zadań samorządu terytorialnego*, Acta Universitatis Wratislaviensis No 2271, Wrocław 2000, p. 34.

vious solutions or carry out the so-called “reforming of reforms”. Such a situation has occurred with relation to the reform of medical services in Poland when the social cost of the privatization appeared too high and the necessity to introduce new legal regulations occurred very quickly. Z. Szreniawski points to the fact that a large part of all reforms of administration after some time appears unsuccessful, however reforms will always be implemented, as the pressure of constantly changing necessities of life forces new solutions in. The author points to the problem of responsibility of persons implementing reforms. High cost of introducing changes, endeavours to strengthen the country and the level of satisfaction of citizens require that proposals of changes should be based upon careful analysis and deep conviction that a reform is indispensable and that it will bring more benefits than losses. Besides, a reform should not be implemented in the atmosphere of condemnation of what exists or existed, because such an approach may lead to unrealistic assessment of the situation.¹⁶

There is no reason why the state should transfer performance of a task outside its administration in a situation when a detriment to legally guaranteed fields would be imminent. As mentioned above, certain tasks are not suitable for privatization although in different countries the range of unprivatisable tasks may be different.

As for the situation of citizens who may become public service suppliers the range of candidates is always determined by the law. When describing legal conditions of giving up direct execution of a public task the legislator in the first place determines a subject which is entrusted with a specific public function or the legislator enumerates a list of subjects entitled to be commissioned the task on the basis of an agreement.

In the case of privatising professions the law regulates the question of access to the profession by means of determining formal and material premises to rationing the right. It means that free access to the profession is closed. This is the case with the professions of a notary and a bailiff. Debt collectors are appointed either at a candidate’s application after asking the opinion of the collectors’ self-government or by the Minister of Justice from his own initiative. The collector receives the right to perform his duties only after reporting to the Ministry of Justice the fact of founding or taking over a collector’s office. Therefore it is conspicuous that the state preserves some important influence upon the process of appointing candidates to work in the profession.

The case of notaries is similar. The situation of people working in privatised professions differs from the situation of other entrepreneurs. The state preserves a number of prerogatives helping it to influence the way a profession is performed. Some authors maintain that the privatization of notaries work is of the complete type, where the state gives up both the very performance of the profession as well

¹⁶ Z. Szreniawski, *Wstęp do nauki administracji*, Lublin 2002, p. 138.

as the responsibility for the task carrying out.¹⁷ I would not interpret this problem in this way, even though the notary bears the immediate responsibility for the execution of his duties since the state maintains some scope of indirect responsibility like the obligation to provide access to notaries' offices and to legally supervise their work. The responsibility of a notary is his personal liability. It is a disciplinary responsibility and, following article 49 of the bill dated the 14th of February 1991,¹⁸ the responsibility for any damage inflicted on a subject while performing a notary's duties, based on civil law of the country, with respect to special care, which a notary is obliged to. Moreover, under article 4, paragraph 3 of the law about notaries if a few notaries run one office as a civil partnership each notary is liable for acts performed by himself. Neither the state nor notaries self-government bear responsibility for the performance of individual notaries but both the state and the self-government are obliged to implement legal measures to ensure proper execution of notaries' work.

Strict legal regulation of working in the described professions has been introduced. Both debt collectors and notaries have to run their offices which makes it impossible for them to get employed in a company and still do their work. In this way the law imposes the manner in which the professional works. In the case of debt collectors the territorial range of their operations is determined statutorily too. They can operate within their district and a creditor can choose a collector within the territory of a given court of appeal.

Opening times for notaries' offices are determined by the law as well – they should stay open minimum 6 hours a day on weekdays and a debt collector may carry out his duties on weekdays and Saturdays from 7 AM to 9 PM. In order to work on Sundays, holidays or at night he must receive a consent from the head of a local court.

Those who work as notaries or debt collectors are also subject to statutory limitations as to undertaking other jobs. A debt collector is not allowed to take up another work which would impair the execution of his obligations or could be received as a violation to the rank of the profession. Any extra employment is possible only with the consent of the head of the specific court of appeal and corporate self-government of debt collectors. A notary cannot get employed without the agreement of a notaries' council except for cases enumerated by the law. Moreover, there exists a statutory ban of notaries dealing with trade, industry, brokerage and business consulting and any other types of work could impair the quality of performance or would feel unbecoming a notary.

A notary's or collector's fees are established in the form of acts of law and both professions are practically blocked from any type of price competition.

¹⁷ M. Stahl, *Prywatyzacja zadań publicznych* (theses of the paper), [in:] Z. Duniewska *et al.*, *Prawo administracyjne – pojęcia, instytucje, zasady w teorii i orzecznictwie*, Warszawa 2000, p. 209.

¹⁸ DzU 02.42.369 with next changes.

As for persons who can provide certain services connected to public tasks in the conditions of privatization they are segregated according to specific legal conditions concerning signing agreements. At present it is the Act of public orders dated the 29th of January 2004 (DzU 04.19.177 changed later) is the basic act regulating the principles and mode of any public purchases, measures of legal protection, control over the purchases and appropriate bodies to address in matters concerning the bill.

Political context

In the model of state worked out in Poland in consequence of system transformation privatization of public tasks plays an important role in the organisation of the way public tasks are carried out and, in consequence, influences the form of public administration structures. Changes in administrative structures are indispensable as after the privatization of public tasks their execution takes place outside public administration.

Firstly, structures of administration which so far have been designed to carry out a given task must get liquidated. Secondly, in their place new structures must be set up – to control and supervise the tasks' getting done. The new structures should obviously be much less complex and much cheaper compared to the previous ones. In the present legal order the legislator has provided for a number of legal institutions determining the cases when public administrative bodies could interfere into the way public tasks, functions and actions are carried out by private subjects.

The existence, operations and authority of the Supreme Control Chamber which wields public control may serve as an example. On the basis of art. 2 of the Supreme Control Chamber bill dated from the 23rd of December 1994 it can undertake controlling actions in accordance with paragraph 3 of the bill referring to carrying out public tasks by organisations and entrepreneurs who take up operations in the scope of privatised public tasks. Such control may mainly check the way they use public or communal property and finances as well as the extent to which they carry out tasks commissioned by the state or local self-government, execute public orders organise or perform intervention or public works, co-operate with the state or public self-government, take advantage of public or self-government property including resources gained on the basis in international agreements, use individually granted aid, guaranties given by the state or self-government. The criteria of this control are lawfulness and thrift.

In the case of privatised professions the state, even though it gave up direct performance if its tasks by means of its structures, has left a possibility to influence the work of its functionaries to its bodies, as the way the work is done is regulated by the law. The state has also retained significant supervisory and control rights. Debt collectors and notaries work in their professions on their own account and they bear responsibility for their actions. However, as described above, the

scope of relations typical for free market behaviour between a service taker and service provider is significantly limited and the freedom of access to the profession is constrained.

Privatization is also bound to granting the people who work in the specific professions the legal status of public functionaries. Legal solutions provide a notary with a special status. He is not a public clerk or official although the nature of the acts he prepares is official. According to the law a notary acts like a person of public trust and exercises protection that public servants are entitled to.¹⁹ In the consequence of such regulations private subjects are, as if through the kitchen door, introduced to the structures of the state, but they work in the regime of the public law, obviously as far as public tasks are concerned only, which openly contradicts to the popularly postulated doctrine of exclusively employing professional administrative staff in Polish administration units, which was supposed to become a remedy for the problems of our administration caused by last system's tendency to introduce the so-called "civic" or "social" factor into the structure.

The problem of privatization of public tasks is connecting with an Anglo-Saxon phenomenon: public-private partnership, which is adapted to Polish reality.

This qualification is mentioned in political debates and science with regard to phenomena defined as privatization of public tasks as well as joint financing by private and public subjects of public tasks or investments aimed at public welfare. As public-private partnership in its actual form is a novelty in our state system a legislation process is being conducted at the moment in order to create legal basis concerning it.

As a public task, in a democratic state of law, should be understood as the state's obligation the state should allocate financial resources to have it carried out. In case of improper realisation of the task by a private subject, the state should be financially and organisationally able to carry out the task via its structures or to arrange and co-ordinate for substitute realisation of the task, which seems to be more realistic due to the reduction of public structures resulting from the process of privatization.

Recapitulation

In my opinion privatizations of public tasks is to great extent a desirable phenomenon if we take the method of public tasks execution in Poland in consideration. However, it should not become a total tendency related to state administration. There are areas in which privatization can be applied, there are other in which it should be applied and finally those in which the state should execute the tasks on its own. Otherwise it will become dysfunctional.

¹⁹ Art. 2§1 Act of 14th February 1991. Prawo o notariacie (DzU 02.42.369 with other changes).

In some cases as a result of privatization the citizen has a chance to be granted a double protection of his rights, because on one hand he will be legally allowed to present pretence concerning tasks execution to the state and on the other hand his situation will be protected on the basis of obligations relation resulting from the contact between him and the private subject. This will happen often in case of privatization of municipal tasks connected with utilization of the dirt or providing energy. However the difference lies in resource of the protection and legal methods applied in the situation.

Privatization of public tasks is a phenomenon which is related to the question of the contribution of the state in the area of administration in contemporary world. Taking Polish reality into consideration we have to admit that privatization in many cases was inevitable – because reasoned by tradition and social aspirations – as it happened in the case of notary. These solutions, tested on the sample of the social group, resulted in transmitting them to another group – bailiffs. Yet in our reality privatization will not dominate the area of administration. Privatization is only one of the methods of administration and should be applied where it will generate best results, because with regard to constitutional resolutions public administration is effected within law restrictions and on the basis of legal rules and can be applied only with legal permission.

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The phenomenon of privatization of public professions as one of the elements of political changes in Poland

Summary

The article discusses the issue of politically-conditioned transformation in the sphere of performing public tasks, i.e. transition from the situation when state structures perform them directly to the situation when they perform them indirectly, maintaining supervision. These are phenomena of privatisation of public tasks and public-private joint partnership, which were adapted to Polish conditions before they were defined by legislation. This phenomenon is acceptable in a democratic, lawful state as the so-called second chance but from the political point of view and from the point of view of the need to implement the mission by public authorities it must be applied allowing for the consequences resulting from the principle of democratic, lawful state. Recent experience proves that in Polish situation public-private joint partnership was implemented much more effectively before it was defined by legislation. Thus, the existing legislation protects public interest but it constitutes a great barrier in practical implementation of this institution.