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The Public Establishment as an Example of an Institution of Administrative Law in Constant Evolution

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Abstract
The functioning of public establishments has been a topic of significant interest in administrative law doctrine for several decades. This institution of administrative law is typical of continental systems and is rooted in both Western traditions (such as French and German law) and the legal systems of former communist countries. This study presents the basic issues related to public establishments, including a historical and comparative legal outline and their characteristics. Particular attention will be paid to the contemporary understanding of the concepts of establishment relationship and establishment authority. Additionally, the basic research dilemmas in this area will be examined from the perspective of the 2020s. The article concludes with a summary.

Keywords
administrative law; public establishment; public service establishment; establishment relationship; establishment authority

1. Introduction

The public establishment, as an institution of administrative law, has undoubtedly been the subject of extensive interest in administrative law doctrine and theory for several decades. Explaining the essence of this legal institution to a reader unfamiliar with continental law, particularly those rooted in the French or German systems, is extremely challenging. Therefore, it is necessary to succinctly define what a public establishment is. On the one hand, it is a specific, separate organisational structure to which the broadly understood state has delegated the performance of public tasks within the sphere of welfare administration, an element of the welfare state. On the other hand, it is a systemic form through which public administration performs these tasks.

The purpose of this paper is to briefly present this legal institution. Firstly, its nature is discussed, including historical and comparative legal perspectives, and some pressing terminological

issues will be clarified. Subsequently, the essence of a public establishment (or public service establishment) is presented, and the establishment relationship – which encompasses the entirety of factual and legal relations linking the establishment's bodies with its users – is analysed. Finally, the basic research dilemmas in this field of administrative law and the prospects for development as we enter the third decade of the 21st century are presented.

This paper does not aim to resolve all research doubts, as these issues have been the subject of many separate monographs, and some cannot be resolved here due to the topicality of the presented problems. Nevertheless, it is worth at least briefly presenting these issues to illustrate the basic structural elements and features of the institution of a public establishment.

2. Public establishment – nature of the legal institution and terminological issues

2.1. Historical and comparative overview

An introductory element to the broader topic is the genesis of the institution of the public (administrative) establishment, i.e. a historical outline from the perspective of the achievements of legal scholars from the "leading" countries, as far as the doctrine of administrative law is concerned – i.e. French and German law – as well as, obviously, Polish law of the inter-war and post-war periods and contemporary law. This will make it possible to signal and, to some extent, resolve certain terminological doubts in this respect[1].

In France, institutions described as public establishments have been operating since the 18th century. However, the status of those establishments was far from the current understanding of the nature of administrative (public) establishments. In the second half of the 19th century, the concept of a public establishment in the modern sense, i.e. a public institution performing the tasks of the state, took shape. French law distinguished the category of public establishments, i.e. a private institution that performs certain public tasks. A characteristic feature of the positions of French scholars is the departure from the concept of a public service in the broadest sense. This has resulted in less importance than in the case of Germany being attached to the strict definition of the systemic and organisational features of administrative establishments and their legal nature. However, the "ease" of encompassing (in the light of the public service doctrine) the concept of public establishments in various organisational and legal forms prompted the search for elements that distinguish administrative establishments from other public institutions. In general, French scholars viewed public establishments as organisational units with legal personality and treated them as part of the public service. Among French authors, the scientific works and views of Léon Duguit, Maurice Yauthier, Michel Dendias, Maurice Hauriou, Louis Rolland, André de Laubadère, Henry Nezard, René Connois, Jean Rivero[2] deserve attention.

1 See the broader considerations on this subject in M Hadel, *Koncepcje zakładu publicznego w nauce prawa administracyjnego* [Concepts of a Public Establishment in the Study of Administrative Law] (Uniwersytet Jagielloński. Wydział Prawa i Administracji. Katedra Prawa Administracyjnego 2019) and M Hadel, *Zakład usług publicznych. Studium administracyjnoprawne* [Public Services Facility. Administrative and Legal Study] (Instytut wydawniczy EuroPrawo 2020). The findings in this article are an abridged version of the theses in both these publications.

2 M Vauthier, *Precis du droit administratif de la Belgieue* (Maison Ferdinand Larcier 1928); M Dendias, *Le gouvernement local. La centralisation et la decentralisation administratives* (Les Presses Modernes 1930); M Hauriou, *Precis de droit administratif et de droit public* (Société anonyme du Recueil Sirey 1921); L Rolland,

Analysing the output of the German doctrine in this matter, it is necessary to point out the classic definition of an administrative establishment by O. Mayer[3], according to which an establishment is a set of personal and material means in the hands of the state or another subject of public administration that is permanently assigned to fulfil specific public purposes. The definition of W. Jellinek[4] actually corresponds to Mayer's position, he considered a public establishment to be a set of material and personal means which the state or another subject of public authority uses to fulfil its public-law tasks; he considered that a feature of establishments is the combination of a material basis and a planned activity for the benefit of the user, who is a "third" person, i.e. outside the organisational structure of the establishment. Other scholars of the countries of this cultural area who have dealt with this concept include A. Merkl, R.H. Hermritt, F. Giese, E. Neuwiem, E. Cahn, A. Köttgen[5].

Referring to the Polish administrative law literature of the interwar period, several leading figures should be pointed out. First of all, it is necessary to mention T. Bigo[6], according to whom a public establishment is a complex of personal and material resources belonging to the state or another subject of public administration (e.g. local governments) and separated in organisational terms into a single technical whole. He emphasised that an establishment is always characterised by a certain degree of autonomy, which falls within the framework of deconcentration. Administrative establishments are created in order to make a certain branch of administration more efficient, and this can only be achieved with a certain degree of autonomy on the part of the bodies that expertly manage the department in question. The difference between a company and a publicly owned establishment is that an establishment has administrative authority, whereas a company does not. The most in-depth monograph on the subject from the interwar period is that by W. Klonowiecki[7]. According to him, a public establishment is a group of persons, things and rights, organised by a public administration entity and permanently connected with it, intended for individual use by entitled (or obliged) persons, for which the court route is excluded in disputes between the establishment and the user, at least as regards the possibility of using the establishment. The constitutive elements of the concept of a public establishment, according to this author, were the separation of a set of persons, things and rights, the fact that the establishment was vested with a certain range of powers in relation to the users (the authority of the establishment) and the exclusion of legal proceedings in relations between the public establishment and its users.

When making a historical legal analysis in terms of Polish law, despite the sweeping social and political changes, socialist "colourings" should not be completely omitted. Two basic monographs

Precis de droit administratif (Librairie Dalloz 1930); A Laubadere, *Manuel de droit administrative* (Librairie Generale de Droit et de Jurispeudence 1960); H Nezard, *Elements de droit public* (Uniwersytet Wisconsin 1928); L Duguit, *Traite de droit constitutionnel* (Editions Cujas 1928); R Connois, *La notion d'etablissementpublic en droit administratif francais* (Librairie générale de droit et de jurisprudence 1959); J. Rivero, *Droit administrative* (Dalloz 1962).

3 O Mayer, *Deutsches Verwaltungsrecht* (Duncker & Humblot 1924).

4 W Jellinek, *Verwaltungsrecht* (Springer 1929).

5 A Köttgen, F Fleiner, J Lukas, L Richter, *Bundesstaatliche und gliedstaatliche Rechtsordnung. Verwaltungsrecht der öffentlichen Anstalt: Verhandlungen der Tagung der Deutschen Staatsrechtslehrer zu Frankfurt a. M. am 25. und 26. April 1929. Mit einem Auszug aus der Aussprache* (De Gruyter 1929); F Giese, E Neuwiem, E Cahn, *Deutsches Verwaltungsrecht* (Mohr Siebeck 1930); R.H Herrnritt, *Grundlehren des Verwaltungsrechts* (Mohr Siebeck 1921).

6 T Bigo, *Związki publiczno-prawne w* świetle *ustawodawstwa polskiego* [Public-law Relationships in the Light of Polish Legislation] (Wydawnictwo Kasy im. Mianowskiego 1928) 178–179, 200.

7 W Klonowiecki, *Zakład publiczny w prawie polskiem. Studium prawno-administracyjne* [Public Institution under Polish Law. Legal and Administrative Studies] (Drukarnia Wydawnictwa "Głos Lubelski" 1933) 55.

from the era of the People's Republic of Poland concerning the issue of administrative establishments (at that time the term "state" was preferred for *de facto* political reasons), by M. Elżanowski[8] and E. Ochendowski[9], presented this issue in detail from the point of view of the Soviet, Yugoslav, Czechoslovak legal scholarship of that time.

Describing the views of the scholars of the post-war period, one should point to S. Kasznica[10], author of the first post-war textbook on administrative law. According to this author, a public institution (i.e. both an establishment and a public enterprise) is a group of persons and material means created by the state or another public-law association that constitutes a technical organisational unity and is intended to serve permanently a certain specific, strictly defined public purpose. In order to distinguish establishments from public enterprises, Kasznica emphasised that "establishments are governed by public law, whereas enterprises are subject to private law in their relations; they do not dispose of administrative authority".

Elżanowski understood the administrative establishment (or in his terms, state-owned) as each relatively independent state organisational unit equipped with permanently separate material and personal means whose basic (statutory) aim is the direct provision of social and cultural services of a continuous, specialised character in the field specified in the act on its establishment, taking into account certain criteria which distinguish a state-owned establishment from a state enterprise: the forms of financing and the nature of the legal relationship of use (the relationship between the bodies of the establishment and the users who benefit from its services is in principle an administrative/legal relationship)[11].

In his monograph Ochendowski pointed out that "an administrative establishment in the formal sense is a state organisational unit which is neither a state organ (office) nor a state enterprise (union)". Thus, if it followed from the law or the act on the establishment of a given organisational unit that it was a state organ or a state enterprise, he did not consider such a unit to be an administrative establishment in the formal sense. On the other hand, "an administrative establishment in the material sense is a state organisational unit which is not an organ of the state and which, in order to perform its basic tasks, has the right to enter into administrative/legal relations"[12].

Moving on to modern law, J. Zimmermann[13] understands a public establishment as a "separate organisational unit which receives for the performance of a certain set of public tasks from the body of public administration which creates it and which for this reason remains under the constant supervision of this body [...] Establishments, while not being bodies of public administration, carry out the tasks of the administration, especially in the field of broadly understood intangible services, of particular importance in such areas as education, culture and health care. The bodies of these establishments are administrative bodies [...]. The performance of the above tasks falls within the broadly conceived closed organisation that is the establishment, while administrative bodies perform their functions outside their organisational structure. For this reason, the operation of the establishment requires different legal instruments, as well as

8 M Elżanowski, *Zakład państwowy w polskim prawie administracyjnym* [State Enterprise in Polish Administrative Law] (Wydawnictwo Naukowe PWN 1970).

9 E Ochendowski, *Zakład administracyjny jako podmiot administracji państwowej* [Administrative Institution as a State Administration Entity] (Wydawnictwo Naukowe UAM 1969).

10 S Kasznica, *Polskie prawo administracyjne: pojęcia i instytucje zasadnicze* [Polish Administrative Law: Basic Concepts and Institutions] (Wydawnictwo Prawnicze 1946) 80.

11 M Elżanowski (1970) 66–67.

12 E Ochendowski (1969) 105, 107.

13 J Zimmermann, *Prawo administracyjne* [Administrative Law] (Wolters Kluwer 2016) 199 et seq.

different qualifications of the employees. The types of authority distinguished correspond to the categories of supervision of establishments, which can be administrative (legal, financial etc.) and professional (pedagogical supervision). The supervision of establishments is carried out by authorised public administration bodies [...]." The feature that distinguishes public establishments from enterprises is their financing from the state or local government budget. As a rule, the activities of public establishments are not profit-orientated and public establishments can operate without having legal personality within the meaning of civil law.

To recapitulate to some extent the above positions and to present my own view in this regard, "an establishment" – as such – is a separate organisational unit that performs statutorily defined functions. The nature of these tasks/functions, the way in which the establishment is distinguished, depends on its location in a particular normative space – whether we are dealing with labour law, financial law, tax law or administrative law. In the contemporary science of administrative law, three tendencies can be distinguished in describing the concept of an establishment: the first one still refers exclusively to the structural/organisational aspect of the definition of an establishment; the second tendency combines the structural/organisational aspect with the material aspect; and the third, new tendency, comes down to describing an establishment exclusively from the perspective of the material aspect. It should be stressed that the institution of an establishment under administrative law has evolved over the course of history; its characteristics and the hallmarks of the concept have varied depending on the historical epoch and the current political and economic system. This has implications if only in terms of the terminology being used. Currently, the term *state-owned establishment* certainly does not reflect the reality, due to completely different legal, social and economic conditions in Poland since 1989. It may be misleading to use the term *administrative establishment*, as not only the public administration (broadly understood as "the state") may be the entity creating and running an establishment. Moreover, within the framework of establishments we are dealing not only with relations of a sovereign, administrative/legal nature, but also with civil-law relations; it seems the most appropriate to return to the classic terminology, namely *public establishment*, due to the nature of the tasks they carry out and the variety of entities running them, or to propose a new concept, namely *public service establishment*, which indicates its fulfilment of public tasks or provision of essential services – from the point of view of the state. Such an approach corresponds to the notion of providing administration, shifts the definition of this notion from distinguishing those entities which create and run the establishment to the public services which the establishment provides and allows for a new approach to the role of the establishment authority and establishment relations within the issue of establishments in administrative law.

2.2. The nature of the publicly owned establishment as an administrative entity

Reflecting on the role of a public service establishment as an entity performing public tasks and situating it among the complex entity structure of public administration (or even, to use an artistic term, a mosaic of entities performing public administration) requires that administration must first be defined. It should be assumed that public administration is an abstract structural entity, independent of staffing, acting monopolistically on behalf of the state on the basis of and within the limits of the law, with the aim of realising public tasks for the common good (with respect for the rights of particular individuals); in realising this aim, it may use the administrative authority granted to it by the legislature in the provisions of the law. As a rule, the activities of

the administration will be executive in nature (although this does not, of course, exclude creative activities). Public administration is carried out by professional staff in an organised, continuous, stable manner.

A public service establishment will thus be a material (in the sense of being singled out as a permanent set of persons and things constituting an organised whole) form of the performance of public tasks by administrative entities – both born of the state and having the character of non-public entities. The performance of these tasks consists in the provision of public services in a specific area of state activity (e.g. in the field of education, health care or culture), which makes a public establishment immanently connected with the notion of providing administration. An establishment should be distinguished from a body and an enterprise, both for structural/organisational reasons and when analysing the relationship between the establishment and its users.

3. The public establishment relationship as the totality of the factual and legal relations linking the public establishment to its users

3.1. Public establishment authorities and its users

It should be pointed out that the internal structure of the establishment is very diverse: it consists of all intra-departmental organisational units of a different nature, but also of establishment bodies. In this context, a distinction can be made between monocratic bodies (establishment manager, deputy establishment manager and other monocratic bodies) and collegiate bodies. Most of the powers and responsibilities belonging to the establishment bodies are concentrated and lie with the establishment manager. They take overall responsibility for its work and take part in its external relations. Collegiate bodies, on the other hand, can have cooperative or consultative decision-making. The criterion of composition allows several types of establishments to be distinguished. Firstly, there are bodies with a purely professional composition, formed from among persons with appropriate professional training who perform activities directly related to the provision of services. This type of body is usually equipped with the power of co-determination on many important matters concerning the functioning of the establishment. Next are mixed bodies, partly composed of the professional staff of the establishment and partly of other persons, e.g. representatives of the founding bodies, the users etc. Thirdly, there are bodies with a purely social composition, i.e. formed only from the users of the establishment or their representatives.

In "controlling" its users in order to achieve certain objectives (for the realisation of which the establishment was set up), establishment bodies make use of a variety of control instruments: of an administrative law nature (primarily using establishment authority), of a civil law nature, of a material/technical nature, as well as extra-legal factors.

In the case of a public service establishment of the corporate type, the legal position of the users (recipients of the services it provides) and the users' influence on the creation of the general acts of the establishment (for example establishment statue) and its functioning are similar to public law corporations, in that they have an influence on the formation of the structural and organisational framework of the establishment, they have the competence to elect the establishment bodies (e.g. the rector) or their representatives can co-found the collegiate bodies of the establishment. The legal determination of the way in which the establishment services are provided is lesser in the case of public service establishments of the corporate type than in the

case of classic establishments. The destinators of corporate-type establishments, i.e. voluntary, open or limited establishments, will have the strongest position, by which is meant the widest possibility to influence the establishment's provision of services and the competence to co-determine organisational issues, as well as the widest range of powers. At the other extreme, in terms of being able to co-determine the establishment's provision of services, are the users of so-called closed and compulsory establishments. Here, the establishment's authority is the greatest; the scope of rights and obligations is regulated to the greatest extent by the establishment's authorities and the possibility to use establishment police or even direct coercive measures is incomparably greater than in the case of public service establishments of the corporate type. To use a somewhat figurative and visual comparison, the legal and factual status of students as users of a university-type public service establishment differs from primary school pupils, through library users or museum visitors to prison inmates.

3.2. Public establishment authority and relationship

The public establishment authority is the most essential concept that captures the nature of the relationship between an establishment and its users (the recipients of its services). The essence of public establishment sovereignty boils down to the possibility of unilaterally shaping the legal situation of the public establishment's destinators through its bodies. According to the classical, original approaches, public establishment relations were not subject to legal protection, as pointed out by Mayer. This thesis was deepened by Klonowiecki, who claimed that the most essential feature of public establishment authority was the possibility to use administrative coercion without the control of courts. The authority was "placed in the sphere of the discretion of the organs of the establishment" and its source would be "a competence not regulated in detail by law", which allows the establishment and its functioning to be located outside the general, external legal order, and subordinates the user to the unregulated instruction to maintain order [14]. It is emphasised that establishment relations are an example of special sovereign relations by virtue of their dual subordination. Establishment relations "overlap" with any other legal relationship linking the individual and the public administration; this submission to a particular legal regime can be voluntary or coercive.

More recent scholars of administrative law distance themselves to some extent from the original understanding of authority as *de facto* unfettered freedom in shaping relations with establishment users, claiming that there is a legal basis (authorisation) for imposing obligations on establishment destinators, but that it is of a general nature (as establishment authority is a part of the state's administrative authority, which is also of a general nature) and is further specified by internal norms.

The establishment relationship is one of the "sub-types" of the administrative law relationship, the purpose of which is to describe the bond between the establishment and its user and some of its specific determinants. The essence of this bond is the possibility for the organs of the establishment to exercise over the users precisely the establishment authority in question. The concepts of public establishment authority, public establishment dependence and public establishment relations are, as it were, different aspects of the same phenomenon, namely the essence and nature of the relationship between the authority of a public (administrative) establishment

14 Similarly J Homplewicz, *Polskie prawo szkolne. Zagadnienia podstawowe* [Polish School Law. Basic Issues] (Wydawnictwa Szkolne i Pedagogiczne 1984) 178.

and the users[15]. Classically, establishment authority was seen as a conglomerate of essentially unlimited powers in relation to the user of the establishment; this follows, for example, from the above-mentioned theses that establishment relations are in the "sphere of the establishment's discretion", that it is "a competence that is not regulated in detail by law" whilst the establishment functions "outside the general, external legal order" and that the user has to submit to unregulated instructions to maintain order. It now seems clear that the establishment relationship is external and does not arise within the sphere of internal administrative activity, which would allow the establishment bodies a great deal of freedom and flexibility in shaping this relationship. One has to agree with the thesis that the concepts of public establishment relations built so far require a new interpretation, in accordance with the current constitutional system of sources of law, with regard to both the emergence and termination of the public establishment relationship[16]. The question of judicial supervision of establishment activities and – perhaps – the extension of the scope of judicial/administrative control over acts and actions taken by establishment bodies also requires remodelling. However, these theses are *strictly* postulatory at the current stage of research.

4. Public service establishments – research dilemmas and prospects for development

Changes in the surrounding (legal) reality also impact the functioning of public service establishments. Some of these establishments are more prone to change, whilst the functioning of other types of establishments is more stabile. This makes it possible to distinguish between two models of public service establishments: a dynamic model and a static model. This distinction can manifest itself at the normative level, depending on the nature of the services provided by the establishment and the performance of certain public tasks (some tasks must be characterised by greater stability, e.g. from the point of view of state security, whilst others are more dependent on the current political and socioeconomic conditions), as well as in the way that services are provided by a given type of establishment – the dynamic model of providing establishment services is more determined by technological progress.

Entering the 2020s created new research areas and prospects for developing administrative law, including its individual institutions and the area of public service establishments. Herein are highlighted only a few of those areas that appear most obvious from the perspective of an informed viewer and observer of reality – due to the limited framework of this study.

The digitisation of public administration activities and the consequent provision of services by establishments in the virtual sphere should be mentioned here. From this perspective, the conventional term "e-establishment" can be used to describe those aspects of managing an establishment or providing an establishment's services in which new technologies are used. Streamlining is observed both in open (semi-open) establishments, the use of which is voluntary, characterised by relative autonomy, implementing the principle of decentralisation (e.g. universities), and in closed, coercive, highly centralised establishments (e.g. prisons).

The years 2020–2022, i.e. the COVID-19 pandemic, have in fact accelerated the process of digitisation of public life; it is to be assumed that this will have an increasing impact on the way public administrations perform their tasks. This will, of course, also be noticeable in the services provided

15 P Chmielnicki, *Zakłady administracyjne w Polsce. Ustrój wewnętrzny* [Administrative Establishments in Poland. Internal Structure] (LexisNexis 2008) 58.

16 Z Czarnik, J Posluszny, 'Zakład publiczny' [Public Facility] in R Hauser, Z Niewiadomski, A Wróbel (eds), *Podmioty administrujące* System Prawa Administracyjnego [Entities Administering the Administrative Law System] (CH Beck 2011) 469–470.

by public establishments. The scale and stability of this phenomenon is at this point unpredictable; therefore, it is worthwhile for scholars of administrative law to start asking how – based on the current doctrinal output and the available conceptual "instrumentarium" – to inscribe in the theory of administrative law a possible 100 percent "e-establishment", i.e. functioning entirely in the virtual sphere. This opens up a number of new fields of research, related, for example, to the definition of an establishment, how to treat the requirement for structural and organisational separation, the nature of the establishment's authority and the form and admissibility of certain authorising measures towards the users and third parties (what would be the disruption of the current functioning of the establishment in the space of the internet?). The problem of the boundaries of the legal space regulated by the norms of administrative law and the "deterritorialization" of public administration appears glaring here. Another question to be asked at this point is obvious: from the perspective of the quality of the establishment's services, is the transfer of its activities to the virtual sphere a positive phenomenon or not? Figuratively speaking, has the process of university didactics benefited from the remote mode of classes during the pandemic period, or is the opposite true? Does the lack of face-to-face contact between teacher and student cause the university (or any school) to lose some of its immanent characteristics?

The internationalisation of phenomena taking place within the framework of public administration, the problems of globalisation and Europeanisation (also in juxtaposition with the aforementioned digitisation) obviously also have an impact on the functioning of public service establishments. This makes it possible to analyse two further issues: the subjective territorial scope of the activities of public service establishments (including transnationality), as well as the subjective (structural/organisational) territorial scope of their activities.

The operations of a public service establishment do not have to be confined to a single building; at the same time, the requirement that the establishment be structurally and organisationally distinct does not determine its limitations. Thus, looking at the issue from a territorial perspective, it should be pointed out that an establishment may provide public services in various places, located within the same city (e.g. university buildings, hospital buildings etc.), or located at a considerable distance from each other, even outside the country (examples of which are branches of universities or colleges based in more than one city). Looking at the issue from a subjective perspective, the establishment relationship will still bind the establishment to its users in a situation where the users are formally ("technically") outside the establishment in the sense of a separate organisational unit; prisoners on furlough, students on a school trip, students on an international exchange (e.g. under the Erasmus programme) are still subject to the establishment's authority. In such a situation, violations of the establishment rules may lead to the application of certain establishment sanctions, up to and including removal from the establishment.

The different understanding of the notion of public establishment authority mentioned above manifests itself, for example, in public administration's increasing use of civil law forms of action. The object of the public establishment relationship is the bond between the public establishment and the user, in which the user may demand a service from the public establishment, resulting from substantive law, and the public establishment has the competence within the framework of the legally defined purposes to shape the legal relationship in an authoritative way. In turn, the mutual rights and obligations which arise within the framework of the above-mentioned relationship are the content of the public establishment relationship. The mutual rights and obligations which arise within the framework of this relationship are the content of the establishment relationship. However, the subject of the establishment relationship is not only the legally determined behaviours of the establishment bodies, which aim to unilaterally shape the

legal situation of the recipient of the establishment services, in connection with their use of the establishment services, but also legally defined situations, in which the establishment body is entitled (or obliged) to shape the mutual rights and obligations by concluding a civil law agreement. Here, too, there is a bond between the establishment and the user, whereby the user can demand a service from the establishment, but can do so by civil law, whereas the possibility for the establishment bodies to shape the legal position of the user with authority is (at least seemingly) reduced, due to the use of the form of a civil law contract. With regard to the question of corporate authority precisely within the framework of a civil law company relationship, one has to agree with the thesis that – in the case of contracts concluded by the administration – the individual is not in a position of equality vis-à-vis the administration; a deeper, "material" analysis of the essence of the legal relationship between the parties is required; in this type of case one can speak of both potential and actual administrative coercion which is undoubtedly felt by the individual. The civil law contract is a "camouflaged" form of implementing the functions of the authority, especially as this form is in fact imposed on the recipient of the establishment services.

Another important field of research that has been opening up in recent years is the question of the limits of establishment authority. Obviously, in accordance with the principle of legalism, they will be determined by the provisions of universally binding law, namely the Constitution and other legal acts. These limits must be respected both when enacting general establishment acts and individual establishment acts (undertaken in relation to specific addressees of establishment services), as well as everyday practice of providing establishment services. The above should automatically pose the problem of the consequences of exceeding the boundaries of public establishment authority, both at the intra-establishment level and within the framework of judicial review.

The above-mentioned topics also give rise to research from a sociolegal perspective: the objective of the bodies of an establishment and its employees is to *effectively* influence its users, to control them with the help of specific instruments (including legal instruments). The purpose of some types of establishments, apart from ensuring that services are provided, is to manifest certain values and promote certain attitudes (e.g. educative influence in schools, rehabilitative influence in prisons or stimulating the capacity for independent, critical thinking in universities). In this respect, it is clearly insufficient to assess the effectiveness of an establishment and the legal measures it uses based solely on a behavioural understanding of the concept. It is therefore necessary in this regard to make skilful use of the means of power. The pandemic and "remote" potential for providing establishment services raises many questions and doubts about the possibility of effectively influencing establishment users.

5. Summary

An "establishment" is a separate organisational unit performing statutorily defined functions. The concept of an establishment under administrative law has evolved throughout history, with its characteristics and hallmarks varying depending on the historical epoch and the prevailing political and economic system. Currently, it seems reasonable to revert to the classic concept of a "public establishment" or to propose a new terminological convention, such as "public service establishment", to emphasise the scope of services provided by the establishment.

A public service establishment is a material entity, distinguished as a permanent set of persons and things constituting an organised whole, and it serves as a platform for performing public tasks by administrative entities – both state and private entities. The performance of these tasks

involves providing public services in a specific area of state activity, inherently linking the public establishment to the notion of a service-providing administration.

The most relevant concept that captures the relationship between the establishment and its users (recipients of its services) is "establishment authority", which refers to the ability of establishment bodies to unilaterally shape the legal situation of the users. However, this concept has evolved and must continually adapt to current constitutional and conventional standards of rights and guarantees of freedom, including judicial supervision and administrative court control over the activities of public establishments.

The third decade of the 21st century has opened many new research areas and prospects for developing public service establishments, including the digitisation of public services (e-government or e-establishment) and the analysis of how establishment services are provided in virtual or cross-border spheres. The understanding of establishment authority is changing as establishment bodies increasingly use non-managerial, civil law forms of action, raising questions about the permissible limits of their authority. This shift also offers an opportunity to analyse the effectiveness establishment bodies' influence on the recipients of their services from a sociolegal perspective.

Undoubtedly, the coming years will bring numerous normative solutions and academic positions that will form the basis for further discussion. As previously indicated, the institution of a public establishment (public services) evolves with the changes in the social and legal reality around us, so no research findings in this area can claim to be fixed and unchangeable.

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