2024 CC&EEL 3(135), 181–194
ISSN 0070-7325
DOI 10.37232/cceel.2024.14

Contemporary Central & East European Law

Public Administration and Criteria of Good Administration in the Works by Professor Stanisław Kasznica

dr Marcin Princ
Adam Mickiewicz University in Poznań, Poland
ORCID: 0000-0002-3727-7455
email: marcin.princ@amu.edu.pl

Abstract
The subject of analysis in this article is Professor Stanisław Kasznica's reflections on public administration. His postulates concerning the functioning of public administration with the criteria of "good administration" are compared with the current understanding of the matter. The main intention is thus to demonstrate the validity of the theses put forward by the professor. In conclusion, it can be stated that the main thesis of the article has been confirmed, that most of the assumptions in the relationship between the administration and the individual were previously known and inspired the postulates raised by contemporary authors. These demands were a harbinger of the adoption in the EU of one of the fundamental rights of the EU – the right to good administration.

Keywords
public administration; administrative law; good administration; standards of good administration; principles of administration and administrative law

1. Introduction

Professor Stanisław Kasznica was a patriot, an academic and a man who made the idea of a university a reality – and the Poznań *alma mater* owes him a great deal. His exceptional devotion to the matters of the faculty was emphasised by Kazimierz Kolańczyk[1]. In the literature, he is also credited with the role of an outstanding creator and architect of the Second Polish Republic, and among his personal characteristics, his great internal discipline, consistency in action and clearly defined worldview are emphasized[2]. These qualities are fully visible in the work he left behind.

1 K Kolańczyk, 'Wydział Prawa Uniwersytetu Poznańskiego (1919–1959)' [The Faculty of Law of the Poznań University at the Time from 1919 to 1959] (1959) Ruch Prawniczy i Ekonomiczny vol. 2, 17.

2 JW Ochmański, 'Stanisław Kasznica. Rektor w latach 1929–1931' [Stanisław Kasznica. Rector in the years 1929–1931] in R Budzinowski, J Haberko, K Kokocińska, M Materniak-Pawłowska, T Nieborak (eds), *Myśląc o przyszłości nie*

The purpose of the research preceding the writing of this paper and the guiding idea of this article was first of all to remember the eminent scholar that Professor Stanisław Kasznica was. Secondly, the author's intention was to popularise the thoughts contained in the studies published by Professor Kasznica. The third aim – and probably most important from the perspective of science – was to answer the main research question of what concept of public administration Professor Kasznica had and what requirements he set for its operation. The subject of the article is issues concerning "good administration". Thus, the main research task was to determine, elaborate on and then compare Professor Kasznica's main studies with the present requirements for public administration. The idea for such an approach to the topic arose from a thesis previously expressed by the author. First and foremost, the point is that the current state of knowledge about administration, as well as the range of requirements placed on it, is the result of a process influenced by previous generations of scholars, including jurists and specialist in administrative science[3]. Thus, the current shape and set of standards for good administration "is the result of evolutionary changes that have occurred in a historical context"[4].

It is worth emphasising that Professor Kasznica's work can be assessed highly from the perspective of not only administrative law, but also of the science of administration. The latter discipline is *ex definitione* orientated towards the accumulation of knowledge about administration[5], but it should also strive to establish model action (standards). A preliminary analysis of Professor Kasznica's oeuvre shows that the author has repeatedly searched for and described such laws. At the same time, they are expressed authoritatively, dictated by the choice of solutions to which the author himself arrived and which he considered the most accurate[6]. Professor Stanisław Kasznica was writing at a time when outstanding works of administrative science were emerging, written by such figures as Max Weber, Henry Fayol and Otto Mayer – and in Poland, Antoni Okolski, Franciszek Longchamps de Bérier and Józef Olszewski. The author also made no secret of the fact that his works were influenced by the work of another eminent Swiss scholar: Frederick Fleiner[7].

This article uses three research methods. The dominant method is the analysis of the content of Professor Stanislaw Kasznica's oeuvre. This method leads to a synthesis and evaluation of the main output. In addition, the dogmatic legal method and the historical legal method were used as auxiliaries.

zapominamy o przeszłości. Księga jubileuszowa 100 lat Wydziału Prawa i Administracji Uniwersytetu im. Adama Mickiewicza w Poznaniu [When Thinking about the Future, we do not Forget about the past. Anniversary Book of 100 Years of the Faculty of Law and Administration of the University of Adam Mickiewicz in Poznań] (Wydawnictwo Naukowe UAM 2019) 33–39.

3 M Princ, *Standardy dobrej administracji w prawie administracyjnym* [Standards of Good Administration in Administrative Law] (Wydawnictwo Naukowe UAM 2016) 65.

4 I Lipowicz, M Princ, 'Paneuropejska zasada dobrej administracji' [The Pan-European Principle of Good Administration] in I Lipowicz (ed), *System prawa samorządu terytorialnego. Samorząd terytorialny: pojęcia podstawowe i podstawy prawne funkcjonowania* [The Local Government Law System. Local Government: Basic Concepts and Legal Basis for Functioning] (Wolters Kluwer 2022) 533.

5 Z Leoński, *Nauka administracji* [Learning Administration] (Wolters Kluwer 2000) 20.

6 S Kasznica, *Polskie prawo administracyjne: pojęcia i instytucje zasadnicze* [Polish Administrative Law: Basic Concepts and Institutions] (Wydawnictwo Prawnicze 1946) 5.

7 Ibid.

2. Contemporary criteria of good administration

Modern public administration is shaped under the influence of different centres. It can be said that it is multicentric, as it is subjected to regulations coming from various centres, including supranational ones[8]. First of all, attention should be paid to the findings of centres of science, institutions (e.g. courts, EU bodies and institutions or the Council of Europe) and NGOs. These centres create legal, non-legal, organisational and ethical requirements leading to concepts such as the principles of bureaucracy, New Public Management, New Public Service, good governance, republicisation, smart administration or responsive administration. As Supernat points out, one cause of public administration being made uniform is "internal pressures related to decentralisation, industrialisation, scientific management, new public management, modernisation or good administration". He assesses that "the emphatic names of these movements and concepts are meant to emphasise their innovativeness"[9].

When it comes to setting criteria for good administration, authors refer with varying degrees of emphasis to a very extensive catalogue of rules, postulates and principles. For example, Lipowicz and Princ consider that:

> administration depends on the existence not only of the assumptions of a legal state but also of a state of good administration. A state which respects the hierarchically established system of sources of law and a state which functions in accordance with such values as truth, trust, justice, keeping agreements, predictability, openness, openness and equality. A state that is oriented towards the realisation of the common good, while respecting every individual in different social contexts (including the healthy, the sick, the migrant, the minor, the senior citizen). A state in which the civil servant manifests qualities such as individuality, knowledge of the realities of life, social commitment, courage and self-reliance in the application of the law, which are an expression of his freedom.[10]

Meanwhile, in the literature, authors such as Stelkens and Andrijauskaitė have begun to highlight the existence of a pan-European principle of good administration, which they argue is not a loose bundle of different rules in administrative matters, but forms a common whole: a true package of good administration[11]. It is emphasised that the multilateral context of the principle includes the organisation of administration (administration and government, division of competences, privatisation and local self-government), the status of civil servants and employees of public institutions, administration and law (sources of administrative law, legality of public administration action and discretion), legal certainty and the protection of legitimate expectations, administrative decision-making, administrative procedures and procedural rights

8 B Kowalczyk, 'Europeizacja prawa administracyjnego' [Europeanization of Administrative Law] in J Blicharz, P Lisowski (eds), *Prawo administracyjne. Zagadnienia ogólne i ustrojowe* [Administrative Law. General and Systemic Issues] (Wolters Kluwer 2022) 546. See also E Łętowska, 'Multicentryczność współczesnego systemu prawa i jej konsekwencje' [Multicentricity of the Modern Legal System and its Consequences] (2005) Państwo i rawo vol. 4, 3–10.

9 J Supernat, 'Tendencje w badaniu porównawczym administracji publicznej i prawa administracyjnego' in J Blicharz, P Lisowski (eds), *Prawo administracyjne. Zagadnienia ogólne i ustrojowe* [Administrative Law. General and Systemic Issues] (Wolters Kluwer 2022) 73.

10 I Lipowicz, M Princ (2022) 551–552.

11 U Stelkens, A Andrijauskaitė, *Good Administration and Council of Europe: Law, Principles, and Effectiveness* (Oxford University Press 2020) 821.

(including spatial planning procedures), administrative sanctions, local public services and their users' rights, freedom of information, transparency and protection of personal data, administrative justice and administrative supervision and state accountability[12]. It is also assessed that the pan-European principle of good administration now constitutes a common European heritage.

In order to establish the criteria for good administration, it is more least debatable to refer to the standards (benchmarks) of good administration formulated at the national as well as the European level. Here, Recommendation R(2007)7 of the Committee of Ministers to Member States on Good Administration is most relevant. It is there that nine principles of good administration are identified: legality, equality, impartiality, proportionality, legal certainty, timely action, participation, respect for privacy and transparency. In addition, the Recommendation sets standards for administrative decision-making, appeals against decisions and redress. There is no doubt that there are many more sources for setting benchmarks. An excellent example is the European Charter of Local Self-Government[13] or the European Code of Good Administrative Behaviour. Perhaps the most momentous one to date has been the adoption of the right to and principle of good administration in the EU Charter of Fundamental Rights. The main task of the principle of good administration, and in particular the right to good administration, is to create protection against unlawful acts of public administration. Thus, it is assigned the role of a so-called umbrella right.[14] These concepts, as well as *good governance*, although difficult to define, must be recognised and analysed, in particular their transformative effects.[15]

The criteria of good administration formulated in the literature can be divided according to their addressee or the sphere of activity of the administration. Thus, for the purposes of this study, and on the basis of the preliminary research on Professor Kasznica's work, the concepts were divided into postulates related to the organisation of public administration and concerning the main principles of its functioning, criteria relating to civil servants, postulates referring to administrative acts and rules of administrative procedure preceding their issue.

3. Organisation of the administration and the main principles of its operation

According to Professor Stanisław Kasznica, "all administration carried out by the state and by public law associations is called public administration, in contrast to private administration carried out by individuals and voluntary associations of individuals, who have no authority"[16]. In the Professor's works, one can easily find very different indications concerning the ways in which an administration operates and exercises its authority. First of all, it should be noted that the concept of public administration is firmly rooted in the assumptions of the rule of law. In this respect, the role of legal rules, in particular those contained in administrative law, is important. As Professor Kasznica states, "administrative law is for the administration a means which

12 Ibid.

13 European Charter of Local Self-Government, drawn up in Strasbourg on 15 October 1985 [1994] JoL 124, 607 as amended.

14 J Mendes, *Good Administration in EU Law and European Code of Good Administrative Behaviour* (2009) EUI Working Paper vol. 9, 4.

15 E Schmidt-Assmann, *Verwaltungsrechtliche Dogmatik* (Mohr Siebeck 2013) 147 et seq.; cf I Pernice, 'Europarechtswissenschaft oder Staatsrechtslehre? Eigenarten und Eigenständigkeit der Europarechtslehre' (2007) Die Verwaltung vol. 7, 246 et seq.

16 S Kasznica (1946) 8.

delineates the limits of its activity, indicates how far it is allowed to go, to invade the sphere of life of individuals, to restrain them or impose something on them"[17].

Addressing the issue of the administrative relationship, the author maintains that "in a state governed by the rule of law, norms bind not only the citizen but also the state".[18] In turn, the activity of the public administration should always be based on a law, and "every intrusion of the public administration into the sphere of freedom and property of a citizen requires statutory authorisation".[19] As he continues, "if the administration wants to restrain him in something or impose something on him, it must invoke some legal provision authorising it to do so. In cases where the law is silent, the authorities are not allowed to invade the sphere of citizens' freedom".[20] However, the author allowed and gave examples of the use of discretionary acts. At the same time, he recognised that "free discretion is included in legal framework".[21] Indeed, he wrote that:

> the administrative authority in the territory, left to the discretion of the localities, is not allowed to dispose of itself arbitrarily. In each concrete case, the authority must, of course, be guided exclusively by the public interest – if it did not do so, it would commit an abuse of power – but otherwise it must be guided only by those motives which the legislature had in mind when giving it this power.[22]

In the monograph entitled *Polish Administrative Law: Concepts and Basic Institutions*, the author assesses that the lack of a general part containing basic concepts, guiding principles and other important provisions of administrative law is particularly unfavourable.[23] As he observes, "its norms flow in a constant abundant stream from numerous sources, scattered over various official publications, overloaded with a mass of technical details, often unclear due to their faulty formulation".[24] In this legislative chaos, the author not only sees problems of comprehension, but fears the return of a police state, a totalistic state, characterised by disregard for legal norms and based on free discretion.[25] Professor Kasznica gives the example of the proliferation of decrees that herald the influence of the bureaucracy, "and this all-encompassing spread of rationing without any barrier takes place outside the influence and control of society".[26]

One of the principles on which the public administration of the time was built was the principle of hierarchy, which means that a superior official may issue a binding directive on how a norm should be interpreted. Kasznica described this organisational principle as the right of superiors, a principle on which the administrative apparatus of the modern state is built.[27] This principle was established in order to "organise the protection of citizens against the abuse of authorities".[28] The bureaucratic system based on the principle of hierarchy allows the modern state to be "able to develop its activities to such an immeasurably broad extent, to encompass an intransigent mass

17 Ibid., 10.
18 Ibid., 116.
19 Ibid., 116–117.
20 Ibid., 117.
21 Ibid., 118.
22 Ibid.
23 Ibid., 21.
24 Ibid., 23.
25 Ibid.
26 Ibid., 26.
27 Ibid., 11.
28 Ibid., 46.

of affairs while maintaining unity of direction".[29] The inspiration of the principles reported by Weber is clear in this respect. The same is true for the principle of competence and the possibility of using coercion.[30] As an aside, it may be noted that Kasznica considers them an important guarantee of the rule of law.[31]

Another of the principles of organisation described in Kasznica's studies is centralism. The author appreciated the approval of this principle in the era of organising states.[32] However, its negative features later became apparent, including:

> detachment from life, lack of understanding of its needs, consideration of the differences existing between individual territories, conscious obliteration of them levelling tendencies, paralysing the individual development of territories and the creative initiative of individuals, templated arrangements, costly proceedings, proliferation and predominance of bureaucracy".

The professor was a supporter of deconcentration and, above all, of the idea of self-government. However, the process of transferring tasks to self-governing bodies did not take place without resistance from "central authorities and ministers, who jealously guard the whole mass of competences that has been concentrated in their hands and are reluctant to cede any of them to subordinate authorities".[33] By means of territorial self-government the citizens gain a share in the execution of the tasks of the government administration, "thereby exploiting the civic institutions which already exist and avoiding new elections".[34]

The author assumed the existence of self-government in its various forms. Behind this term was the original assumption that "in addition to this main one, there is a whole series of other separate centres that perform administration on their own".[35] Self-government assumes that those concerned also have the right to take part in administration themselves, either directly or indirectly.[36] The trump card of self-government is first and foremost that it is "a dam against the omnipotence of the state and on its behalf the ruling bureaucracy or party. It is one of the most important bulwarks beyond which civic freedom can take refuge and be maintained". Self-government is a civic school where "the broad strata of society become practically acquainted with public affairs, awaken their interest in them, expand their spiritual spectrum beyond the sphere of their own selfish interests, and grow up to comprehend state-wide affairs and interests".[37]

Professor Kasznica was not in favour of transferring selected tasks of government administration to some self-governing bodies. He assesses that such a step would be recognised as a kind of experiment, not sustainable and fraught with risk. First of all, he points out that these tasks should be transferred "in relation to those self-governments which have demonstrated their vitality and efficiency thanks to the selection of people working in them", which will contribute to rivalry

29 Ibid., 61.
30 Ibid., 12–14.
31 Ibid., 14.
32 Ibid., 58.
33 Ibid.
34 S Kasznica, *Polskie prawo administracyjne. Notatki z wykładów Prof. Dr. St. Kasznicy r. akad. 1928/1929* [Polish Administrative Law. Lecture Notes by Prof. Dr. St. Kasznicy, Academic 1928/1929] (Koło Prawników i Ekonomistów 1929) 6.
35 S Kasznica (1946) 62.
36 Ibid., 68.
37 Ibid., 79.

and jealousy.[38] The author also predicts that "At the very most aforementioned 'assignation' will probably stop in the East, where it will be counteracted by considerations of low culture and, to some extent, political considerations".[39] He also warns against the possibility of cancelling the decision to delegate tasks to self-governments, which may then result in the need to roll back "the entire administrative apparatus in terms of people and material resources which self-governments had to assemble beforehand in order to perform the tasks entrusted to them".[40]

Professor Kasznica's work also recognises the issue of citizens' participation in general administration tasks. The author expressed the view that the constitutional provisions had not been implemented, and the adopted legal solutions were sometimes illusory.[41] For example, this is how the professor assesses the cooperation with the voivode of the voivodship self-governing bodies and with the district *starost* of the district self-governing bodies: "This is the simplest and most practical solution from the structural point of view, with its implementation facing serious difficulties in view of the fact that, apart from the former Prussian district, there is still no voivodship self-government anywhere". He described the *powiat* self-government in some parts of Poland as "so long not renewed, that it has almost died out".[42] However, Kasznica positively assesses the creation of voivodship councils, which are to be mixed bureaucratic and civic bodies and which the legislature intends to be permanent and not provisional institutions.[43] On the other hand, the author is critical of certain obligations, such as the obligation of the provincial governor to submit a report to the Council. He was concerned that this would lead to adverse effects.

4. Demands on civil servants

Among the criteria of modern good administration are demands relating to civil servants. The European Code of Good Administration is an excellent example in this respect. The final assessment of an administration depends not only on the shape of the regulations under which it operates, but also on the way in which the staff employed within its structures act. Professor Kasznica's work also contains threads relating to the requirements placed on civil servants.

In Professor Kasznica's studies, an official is supposed to be the executor of legal norms. However, this executor does not fit into the Weberian concept of the official, performing his duties like a machine. The officials described in the administrative law textbook were supposed to be independent and critical.[44]

It is worth noting the conditions for the performance of the civil service cited by the professor, where the civil servant relationship is clearly based on the law, is voluntary and has not only a legal but also a moral character.[45] On the other hand, an official should give themselves wholly to the service at all times, they are subject to official authority, their public service is their life's work, they require professional preparation and the proper performance of their duties is ensured by

38 S Kasznica, 'Władze administracji ogólnej po reorganizacji dokonanej Rp. P.R.19/1.1928' [The General Administration Authorities After the Reorganization Carried out by the Republic of Poland. P.R.19/1.1928] (1928) Ruch Prawniczy, Ekonomiczny i Socjologiczny vol. 2, 159.

39 Ibid.

40 Ibid.

41 Ibid., 150.

42 Ibid.

43 Ibid., 151.

44 S Kasznica (1946) 12.

45 Ibid., 88.

the provisions on official (disciplinary) responsibility.[46] The author also seeks a solution in the dispute over the permanence of employment. He argues for relative permanence in the employment of civil servants[47] and even demands that they be decently compensated. One excerpt from the handbook attests to this: "civil servants' salaries are at starvation level; they do not fulfil their purpose because they do not provide the civil servant with a sufficient, decent livelihood".[48]

Official activities, in the professor's opinion, should be supervised by administrative courts, in which he saw one of the main institutions for the legal protection of individuals. Three motives were decisive for this.[49] Firstly, "for a civil servant, the main guideline he is guided by when dealing with matters is the public interest [...]. It is therefore necessary to subject acts of administration to the control of a body which would be able to maintain the balance between the public interest and legitimate private interests, and ensure full protection of subjective rights".[50] Secondly, the author draws attention to the link between the official corps, which is of a negative nature. "The whole mass of civil servants – independent of their hierarchical ranking and their distribution in the various authorities – constitutes a single body (the bureaucracy), animated by a sense of solidarity of professional commonality, of the importance of the role it plays in society and by a spirit of corporate connectivity (*espirit de corps*)".[51] Thus, "[t]he official who handles an appeal at a higher administrative instance is bound, as a rule beyond his consciousness, with knots of unity and solidarity with the other official who handled the case at the adjudicating instance, and tends to uphold the position taken by the latter in the name of the 'solemnity of authority', and to oppose the position of some other individual, belonging to the administered mass. In this way one can speak of the principle of being a judge in one's own case (*judex in re sua*)".[52] The third argument is related to the fact that every official is subordinate to a minister and owes the minister absolute obedience, being their highest hierarchical superior.[53] In view of the above arguments, Professor Kasznica concludes that safeguarding the interests of the individual can only be done by a hierarchically independent entity.[54]

5. Criteria relating to administrative acts and proceedings

The central phenomenon in administrative law, as can be read from the lecture notes published thanks to the efforts of the Circle of Lawyers and Economists of the University of Poznań, is the administrative act, although it is not the issuing of acts that is the main purpose of administration,[55] but the production of practical values.[56] Prominent among the objections to administrative acts was the fact that they must be issued on some legal basis, hence the postulate that they should always begin by citing the legal provision that authorises them.[57] As can be read later in the notes:

46 Ibid., 89.
47 Ibid., 91.
48 Ibid.
49 Ibid., 165.
50 Ibid.
51 Ibid.
52 Ibid., 166.
53 Ibid.
54 Ibid.
55 S Kasznica (1929) 14.
56 Ibid.
57 S Kasznica (1946) 97.

"In a primary state, it is required that the administrative act is legal", i.e. issued by the competent authority, that its content is in accordance with the law (laws and regulations) and that it does not contradict any law or regulation.[58] In addition, it is important that the authority issuing individual act adheres to certain rules assigned by the act not only related to administrative procedure, that the external form of the act is respected when it is issued and that the act is purposeful, i.e. it achieves the state for which it was created.[59] According to Kasznica, the preservation of these conditions secures "the interests of citizens and the rule of law of the state".[60] The authority, the professor argues, "while keeping the public interest first and foremost in mind, is at the same time obliged to protect the subjective rights and legally protected interests of the parties, and this in principle ex officio, without waiting for their applications".[61]

The issuance of the act should be preceded by "even the most summary proceedings aimed at determining whether in this particular case the essential conditions under which the norm authorises the very issuance of this act exist".[62] The act should meet the criteria of legality under which it is understood: it should be possible for it to be issued by a material and territorially competent authority, it should be issued in the proper form ascribed by law, it should be issued in compliance with the relevant provisions of administrative procedure; and its content should not contradict any statutory provision – "the act should not prescribe anything that would be actually or legally unenforceable".[63]

Professor Kasznica devotes a separate place in the book to the form of the decision. Each decision should contain a reference to the legal basis, date, operative part of the decision, an indication of its type, the signature of the authority and the instruction of the legal centre. A decision, in whole or in part, should have a legal and factual justification. He adds that "justification of a decision is superfluous when issuing it was left to the discretion of the authority".[64] The decision should contain an instruction providing information on the remedy indicated to the appeal authority, the time limit for appeal and the procedure to be followed. The author instructs that an erroneous instruction must not leave the party in the wrong.[65] The above-mentioned arguments on the conditions for issuing administrative acts were dictated by the adopted legal solutions.[66]

Professor Stanislaw Kasznica also describes the conditions for conducting administrative proceedings in which an administrative act is issued. The purpose of the rules is to ensure that the act has the essential qualities that determine its validity (i.e. legality and expediency), and at the same time to protect the rights of those affected by it.[67] The monograph highlights the following principles of administrative procedure: it "is basically oral free of any formalism" and yet should consolidate what "has been established in the course of oral communication between the authority and the party"[68]. According to the established assumptions, simple matters should be

58 S Kasznica (1929) 14.
59 Ibid.
60 Ibid.
61 S Kasznica (1946) 109.
62 Ibid., 97.
63 Ibid., 101.
64 S Kasznica (1929) 29.
65 S Kasznica (1946) 109.
66 Rozporządzenie Prezydenta Rzeczypospolitej z 22 marca 1928 r. o postępowaniu administracyjnym [Regulation of the President of the Republic of Poland of 22 March 1928 on Administrative Proceedings] [1928] JoL 36, 341 as amended.
67 Ibid., 105
68 Ibid., 106–107.

clarified immediately, if possible orally. The written form is reserved for cases clearly indicated by the regulations. Furthermore, the author stresses that administrative proceedings are in principle open, although, as he points out, this principle has not been fully implemented. It is proposed to amend the provisions so that the authority is obliged to notify the parties of the dates of the evidence proceedings, allowing the party to find out the status of the case. According to Kasznica, the hitherto haphazardness does not correspond with the solemnity of the office.[69] Furthermore, it is argued that the interests of the parties should be taken into account when dealing with a case, and that the authorities are supposed to support the parties with advice and instruction.[70] In addition, no-one should be taken by surprise by the authorities: everyone should be informed in advance of what the authorities want from them so that they can respond in advance.[71]

6. Measures to protect the individual against the power of public administration

A very interesting part of Professor Stanisław Kasznica's handbook is the chapter on legal protection. This is because the author recognised what an all-powerful organisation the public administration is, illustrated by the following quotation: "Nowadays no-one's administration can even approximately enter into comparison with the state administration, both because of the vastness of the fields covered by it and because of the intensity and power of the action".[72] The law, which officials should be guided by, "does not protect the citizen from lawlessness, does not prevent administrative bodies from carrying out unlawful acts".[73] The reason for this state of affairs is the officials who put the law into practice: "they – like people usually do – all too often make mistakes, are sometimes careless, act arbitrarily, are not always disinterested and – worst of all – succumb to political influence or bend the law to party requirements".[74]

The author meticulously presents the legal devices and measures developed by the state for organising public administration so as to guarantee the legal protection of individuals. Among these he primarily includes[75] the separation of powers, the strict definition and delimitation of the competences of administrative authorities, "the formation of those manifestations of the will of the administrative authority which are intended to produce legal effects into an administrative act with all its definiteness and strictness", shaping administrative proceedings to be similar to court proceedings, the qualification of officials, particularly their legal training, the granting of an important place to self-government in the organisation of public administration, the participation of the civic factor in the process of administration and "the principle of obedience only to lawful orders and decrees of the authorities", in which it is the authority, and not the individual, that must demonstrate the lawfulness of its actions.

A special role in the system of human legal protection, according to Professor Kasznica, is played by administrative courts, which were established to settle disputes between individuals and administrative authorities.[76] According to the author, the idea of subjecting the activity of

69 Ibid., 107.
70 Ibid.
71 Ibid., 108.
72 S Kasznica (1946) 7.
73 Ibid., 155.
74 Ibid.
75 Ibid., 155–157.
76 Ibid., 164.

public administration to control by the court had met with very strong resistance. It was argued that the existing hierarchical control and the principle of legality on the basis of which officials act should be sufficient to safeguard the interests of the individual. Likewise, according to critics, the introduction of an administrative judiciary would unnecessarily prolong proceedings and burden the state budget with additional costs.[77] Professor Kasznica strongly advocated the functioning of judicial supervision of public administration.

The last of the safeguards mentioned by Professor Kasznica, and at the same time a means of legal protection of the individual, was civil liability for damages caused by the administration. The author advocated a solution in which both the official and the state would have to make reparation jointly and severally for the damages caused. This would not only involve compensation for material damage, but also moral damage for unlawful action, and this should be decided by the courts. Interestingly, Kasznica supported the claiming of compensation by all citizens as well as foreigners. In the latter case, he allowed the application of the principle of reciprocity, which was then the key to understanding the legal situation of foreigners.[78]

7. Conclusions

The analysis of Professor Stanisław Kasznica's oeuvre makes it possible to present several conclusions, which also constitute a synthesis of thought. First of all, it should be noted that the arguments contained in all works are interesting and at the same time balanced. What needs to be emphasised is the modernity and topicality of the thoughts. The language of the studies is firm and precise. A very interesting part of the output is the extended arguments on the rights of the individual. They have been dictated by concern for the human being and the protection of the individual from an all-powerful public administration. In this respect, they are closely linked to the contemporary idea of the emergence of law and the principle of good administration, i.e. the protection of the individual entering into a relationship with the administration. The author, who should be regarded as "ahead of his time", was very much grounded in the theory of local self-government, postulating that independence in performing tasks should be guaranteed within the framework of the existing state. The professor's work is full of well-thought-out concepts and, most importantly, was accompanied by numerous comments and proposals for change. It is worth noting that the findings are important not only for administrative law, but also for the science of administration. I share the assessment expressed by Czartoryski that reading the work makes it possible to emphasise one's "own reflections, highly personal original and timeless being an expression of deep experiences and reflections, and presented in a rigorously disciplined and logically ordered form".[79]

What kind of model of administration is painted on the basis of Professor Stanisław Kasznica's work? First and foremost, one should emphasise the very strong grounding in the assumptions of the rule of law. Public administration is supposed to operate on the basis of the law, and should be firmly bound to it. It is worth noting that the modern concept of good administration is also based on this foundation. Moreover, public administration should be purposeful, impartial, focussed on the public interest, supervised, decentralised and based on the work of educated officials, and it should justify its decisions and enable the participation of citizens in its decisions

77 Ibid.

78 L Babiński, *Prawo cudzoziemców w Polsce: (Teksty z komentarzem)* [Foreigners' Law in Poland: (Texts with Commentary)] (Księgarnia F Hoesicka 1925) 11.

79 P Czartoryski, 'Wstęp' [Introduction] in S Kasznica (ed), *Władza* [Power] (1996) Analecta 5/1(9), 7.

and listen to their voices. The work also highlights themes that see the need to limit public administration by using solutions to protect individuals. It can be said that those who believe that the contemporary criteria of "good administration" are not new are correct. In my view, however, what is new is the transformation of the demand for good administration into the right to good administration.[80] This postulate, however, was not reported in the professor's works.

What is compelling about Kasznica's work is its relevance, especially given the current sociopolitical climate. This assertion is exemplified by two quotations concerning functioning of the press and the judiciary. Firstly, Kasznica notes that "[i]n countries where there is freedom of the press, it is one of the most important and effective tools for controlling the administration. An honest, independent press, which does not recklessly hurl unproven allegations and accusations at the administration, is a strong brake against the abuses and lawlessness of administrative authorities".[81]

Secondly, Kasznica addresses judicial irremovability: "However, the real blow to the judiciary in general, and to the Supreme Administrative Court, was the suspension of judicial irremovability on several occasions since 1926. This has left a deep, permanent, fatal mark on the psyche of judges, shaking their sense of internal independence. There can be no question of real, truly effective judicial control over the administration if a judge lives in acute fear that at any moment his irremovability may be suspended again and then scores will be settled with him for judgments issued without the government's attention".[82]

These excerpts from Kasznica's administrative law textbook, along with his other arguments, underscore the enduring relevance of his works. They are timeless.

References

Literature

Babiński L, *Prawo cudzoziemców w Polsce: (Teksty z komentarzem)* [Foreigners' Law in Poland: (Texts with Commentary)] (Księgarnia F Hoesicka 1925).

Czartoryski P, 'Wstęp' [Introduction] in S Kasznica (ed), *Władza* [Power] (1996) Analecta 5/1(9), 7–12.

Kasznica S, 'Władze administracji ogólnej po reorganizacji dokonanej Rp. P.R.19/1.1928' [The General Administration Authorities After the Reorganization Carried out by the Republic of Poland. P.R.19/1.1928] (1928) Ruch Prawniczy, Ekonomiczny i Socjologiczny vol. 2, 137–169.

Kasznica S, *Polskie prawo administracyjne. Notatki z wykładów Prof. Dr. St. Kasznicy r. akad. 1928/1929* [Polish Administrative Law. Lecture Notes by Prof. Dr. St. Kasznicy, Academic 1928/1929] (Koło Prawników i Ekonomistów 1929).

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

80 See also A Szpor, 'Odwaga służenia dobru wspólnemu' [Courage to Serve the Common Good] in Z Niewiadomski, Z Cieślak (eds), *Prawo do dobrej administracji. Materiały ze Zjazdu Katedr Prawa i Postępowania Administracyjnego, Warszawa–Dębe 23–25 September 2002* [The Right to Good Administration: Materials from the Congress of Departments of Administrative Law and Procedure, Warszawa-Dębe 23–25 September 2002] (Uniwersytet Kardynała Stefana Wyszyńskiego 2003) 547–558.

81 S Kasznica (1946) 158–159.

82 Ibid., 171.

Kasznica S, 'Prawo Administracyjne. Przegląd prawodawstwa' [Administrative Law. Legislation Review] (1923) Ruch Prawniczy i Ekonomiczny, 291–339

Kolańczyk K, 'Wydział Prawa Uniwersytetu Poznańskiego (1919–1959)' [The Faculty of Law of the Poznań University at the Time from 1919 to 1959] (1959) Ruch Prawniczy i Ekonomiczny vol. 2, 1–32.

Kowalczyk B, 'Europeizacja prawa administracyjnego' [Europeanization of Administrative Law] in J Blicharz, P Lisowski (eds), *Prawo administracyjne. Zagadnienia ogólne i ustrojowe* [Administrative Law. General and Systemic Issues] (Wolters Kluwer 2022) 543–549.

Leoński Z, *Nauka administracji* [Learning Administration] (CH Beck 2000).

Lipowicz I, Princ M, 'Paneuropejska zasada dobrej administracji' [The Pan-European Principle of Good Administration] in I Lipowicz (ed), *System prawa samorządu terytorialnego. Samorząd terytorialny: pojęcia podstawowe i podstawy prawne funkcjonowania* [The Local Government Law System. Local Government: Basic Concepts and Legal Basis for Functioning] (Wolters Kluwer 2022) 537–618.

Łętowska E, 'Multicentryczność współczesnego systemu prawa i jej konsekwencje' [Multicentricity of the Modern Legal System and its Consequences] (2005) Państwo i Prawo vol. 4, 3–10.

Mendes J, *Good administration in EU Law and European Code of Good Administrative Behaviour* (2009) EUI Working Paper vol. 9, 1–13.

Ochmański JW, 'Stanisław Kasznica. Rektor w latach 1929–1931' [Stanisław Kasznica. Rector in the years 1929–1931] in R Budzinowski, J Haberko, K Kokocińska, M Materniak-Pawłowska, T Nieborak (eds), *Myśląc o przyszłości nie zapominamy o przeszłości. Księga jubileuszowa 100 lat Wydziału Prawa i Administracji Uniwersytetu im. Adama Mickiewicza w Poznaniu* [When Thinking about the Future, we do not Forget about the past. Anniversary Book of 100 Years of the Faculty of Law and Administration of the University of Adam Mickiewicz in Poznań] (Wydawnictwo Naukowe UAM 2019) 33–39.

Pernice I, 'Europarechtswissenschaft oder Staatsrechtslehre? Eigenarten und Eigenständigkeit der Europarechtslehre' (2007) Die Verwaltung vol. 7, 225–253.

Princ M, *Standardy dobrej administracji w prawie administracyjnym* [Standards of Good Administration in Administrative Law] (Wydawnictwo Naukowe UAM 2016).

Schmidt-Assmann E, *Verwaltungsrechtliche Dogmatik: Eine Zwischenbilanz Zu Entwicklung, Reform Und Kunftigen Aufgaben* (Mohr Siebeck 2013).

Stelkens U, Andrijauskaitė A, *Good Administration and Council of Europe. Law, Principles, and Effectiveness* (Oxford University Press 2020).

Supernat J, 'Tendencje w badaniu porównawczym administracji publicznej i prawa administracyjnego' [Trends in the Comparative Study of Public Administration and Administrative Law] in J Blicharz, P Lisowski (ed), *Prawo administracyjne. Zagadnienia ogólne i ustrojowe* [Administrative Law. General and Systemic Issues] (Wolters Kluwer 2022) 70–87.

Szpor A, 'Odwaga służenia dobru wspólnemu' [Courage to Serve the Common Good] in Z Niewiadomski, Z Cieślak (eds), *Prawo do dobrej administracji*: *materiały ze Zjazd Katedr Prawa i Postępowania Administracyjnego, Warszawa-Dębe 23–25 September 2002* [The Right to Good Administration: Materials from the Congress of Departments of Administrative Law and Procedure, Warszawa-Dębe 23–25 September 2002] (Uniwersytet Kardynała Stefana Wyszyńskiego 2003) 547–558.

List of legislative acts

Rozporządzenie Prezydenta Rzeczypospolitej z 22 marca 1928 r. o postępowaniu administracyjnym [Regulation of the President of the Republic of Poland of 22 March 1928 on Administrative Proceedings] [1928] JoL 36, 341.
European Charter of Local Self-Government, drawn up in Strasbourg on 15 October 1985 [1994] JoL 124, 607.