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Reflections on What Modern Administrative Law has Lost from Professor Stanisław Kasznica's Views on Public Service

dr Wojciech Drobny
Institute of Law Studies Polish Academy of Sciences, Poland
ORCID: 0000-0002-7956-4348
email: w.drobny@inp.pan.pl

Abstract
The interwar period marked the golden age of Polish administrative law, during which many of its key institutions were established or developed. One such institution was the model of public service, which – rooted in public law principles – comprehensively and logically shaped administrative law. Among the foremost figures shaping administrative law during that time was Professor Stanisław Kasznica. This article juxtaposes his thoughts and proposals with the current state of this field of Polish law, providing an assessment of the present condition of Polish administrative law.

Keywords
administrative law; public service; civil servant law

1. Introductory remarks

In the darkness of the conflagration of war and occupation, Professor Stanisław Kasznica's work, *Polskie prawo administracyjne. Pojęcia i instytucje zasadnicze* (*Polish Administrative Law: Basic Concepts and Institutions*),[1] took on a special character. Although the book was intended as a practical textbook for the secret sets of the University of Warsaw and the University of the Western Territories, at the same time it confirmed the unwavering hope for a return to pre-war statehood, understood not only as independence or in systemic terms, but above all – far from the Warsaw reality of 1943 – in axiological terms, realised also by administrative law with its elementary principles. Drawing on the outstanding achievements of pre-war administrative law experts, Professor Kasznica outlined an interpretation of administrative law in which the state,

1 The first edition of the book was published during the German occupation of Warsaw in 1943. Its author was in Warsaw from 1942 to 1944, and from 1943 onwards taught in clandestine classes.

its organs and public administration respect the principle of legalism and the rule of law.[2]

In the third chapter of the nearly 200-page textbook, which is called *Bodies of Public Administration*, the author presents the issue of the public service alongside considerations on the concepts of office (authority), government and local government and public establishments and enterprises. Although all the areas covered in this book are extremely valuable, the conception of the public service, its system and principles of operation and the status of its functionaries is particularly important in modern times. Today, civil service law in Poland is experiencing an identity crisis and a conceptual crisis in general.[3] The golden era of this institution of law, as indeed of administrative law in general, dates back to interwar legislation. This resonated perfectly in last year's public discussion in the context of the centenary of the enactment of the first Civil Service Act.[4] It was then that the civil service was established in a complete, well-thought-out version,[5] which in practical terms was capable of performing public tasks efficiently. The post-war period was a time of degradation of this concept and the de facto instrumentalisation of the regulations governing it. The analysis of Professor Kasznica's reflections on the model of public service at that time may therefore be more than a purely historical study – also a tool for assessing the direction of changes in these regulations, and even the basis for *de lege ferenda* postulates in future.

2. The Nature and Legal Sources of the Public Service

In addressing the issue of the overriding essence and meaning of the public service, Professor Kasznica does not stop at merely describing the statutorily assigned tasks. He formulates a definition of the term "public service" in practical terms by indicating that it means "anyone's acting on behalf of and for the benefit of a public law association, fulfilling tasks belonging to it in the capacity of its organ",[6] and even goes so far as to specify that when the association is the state, then "acting in the capacity of its organ is called state service".[7] However, he also indirectly expresses a view on the momentous status of the individual in the public service. Indeed, he states that "with the eradication of the word 'servant' from colloquial speech, there is now no term that encompasses all who perform any kind of public service".[8] The above quote only refers to the problem of terminological nomenclature in the interwar legislation on its surface. This issue is clarified at once, as the author points out that:

> the broadest concept yet is contained in the term "functionary" and in this broad sense it is used in legislation. But all types of public service, such as military service, cannot be squeezed into its framework. And therefore we are forced to use the phrase "performing public service" to cover all types of this service without exception.[9]

2 S Kasznica, *Polskie prawo administracyjne: pojęcia i instytucje zasadnicze* [Polish Administrative Law: Basic Concepts and Institutions] (Wydawnictwo Prawnicze 1946) 9.

3 T Górzyńska, W Drobny (eds), *Polskie prawo urzędnicze – kryzys tożsamości* [Polish Clerical Law – Identity Crisis?] (CH Beck 2016) 7.

4 A Radwan, 'Służba cywilna wymaga reformy na wzór tej sprzed 100 lat' [The Civil Service Requires Reform Along the Lines of the One 100 Years Ago] (2022) Dziennik Gazeta Prawna no. 33, B7.

5 J Kopczyński, *Przepisy normujące stosunek państwowej służby cywilnej* [Provisions Regulating the Relationship between the State Civil Service] (Drukarnia Techniczna 1925) 9 et seq.

6 S Kasznica (1946) 87.

7 Ibid.

8 Ibid.

9 Ibid.

In a deeper layer, however, there is a thesis more important than the legislative inaccuracies of the time: that the issue of public service in the theory and system of law belongs to public, administrative law and not to private law.

Particular attention should be paid to the sentence cited above about the eradication of the notion of *servant*, which was inserted in the textbook as if in passing. The author, after all, by formulating the thought in this way, *de facto* acknowledges its substantive correctness, although he makes a veiled reservation about the reasons why it cannot be used. Nonetheless, the word logically and strictly fits into the scope of the term "public service" and accurately reflects the legal status of an officer in this service. This is, after all, a key attribute of the administrative law relationship arising from the theory of administrative law, which "manifests itself [...] above all in the imbalance of interests represented by the participants in this relationship. The state represents the public interest [...]. It prevails over the private interests represented by individuals."[10]

Indeed, Professor Kasznica has no doubt that the relationship linking an officer with the state is a public-law relationship regulated by administrative law. Of course, it is not of an absolute nature, as certain justified departures from these assumptions are permissible, and the private interest itself, placed in a weaker position in the administrative-law relationship, is subject to legal protection.[11] Nevertheless, this position of an officer is in line with the dogma of this branch of law, which has been singled out in the legal system due to, *inter alia*, an extremely practical criterion: "grasping the state from a dynamic position – the state in motion, in action".[12] Undoubtedly, an indispensable element complementing administrative law understood in this way is the set of its provisions which regulate the legal status and official relations of the persons applying this law.

Today, the problem of the lack of understanding, in both Polish law and public debate, of the essence of the public service and its nature is compounded many times over. The complete lack of vision of this legal institution is easily discernible. One of its manifestations is the legislature's inability to consistently build the status of this legal institution within one proper branch of law. This is because the legislature acts reactively, creating provisions that implement the demands of the direct addressees of these norms, as well as copying Western European law, and thus introducing into the legal order solutions that are alien to official law. The current dominance of labour law in the area of public service and the further dynamic appropriation by this law of not even the bordering administrative law, but of its traditional institutions,[13] stems from here. The post-constitutional legislative practice, on the other hand, is all the more reprehensible because in the 1997 Basic Law in force, the legislature explicitly formulated a reasonable framework and guidelines for the construction of the public service. The expected model was never implemented in law.

There is a certain echo in the Polish civil service law of the issue so enigmatically signalled by Professor Kasznica concerning the understanding of an official as a servant. Referring to the Order of the President of the Council of Ministers, issued on the basis of Article 15(10) of the

10 Ibid., 119.

11 In Kasznica's view, public interests "prevail over them up to the limit set by statutes, beyond which certain private interests are considered legitimate on the same obtain legal protection". See ibid., 119.

12 Ibid., 20.

13 W Drobny, 'Przenikanie się prawa konstytucyjnego, prawa pracy i prawa administracyjnego na przykładzie polskiego prawa urzędniczego w świetle orzecznictwa (zagadnienia wybrane)' [The Interpenetration of Constitutional Law, Labor Law and Administrative Law Using the Example of Polish Civil Service Law in the Light of Jurisprudence (Selected Issues)] (2018) Studia Prawnicze no. 5 spec, 214 et seq.

Civil Service Act,[14] on the guidelines for observing the principles of the civil service and on the principles of ethics of the civil service corps,[15] in §15 we find a thesis according to which the principle of public service is expressed in "the servile character of work towards citizens, aimed at the realisation of the values underlying the law of the Republic of Poland" and "service to the state, the basic element of which is the protection of its interests and development".[16]

3. The essence and characteristics of the civil servant relationship

I consider the reflections on the essence and characteristics of the "civil servant relationship" to be fundamental. In fact, Professor Kasznica made a complete and accurate reconstruction of the model of the public service through a detailed description of its structural elements. This model refers fully and consistently to the public-law dimension of this institution, strictly determined by administrative law. In an orderly, thoughtful and complete manner, he indicated those elements and features which build the public service. In the Polish legal literature, this part of the work is unique and extremely valuable.

The catalogue of elements constituting the civil servant relationship, which is the basic relationship of public service (voluntary and professional[17]), is a closed set containing as many as ten parts. Firstly, it is a public-law relationship, which means that its establishment, modification and termination, as well as its elements, are regulated by mandatory rules, "and the administrative authority has only a very limited discretion in applying them, and cannot adapt them to individual situations."[18]

Secondly, the clerical relationship is voluntary, meaning that the choice of a career as a civil servant is left to the citizen's discretion, in contrast to the compulsory public service of the time, which included such segments of the state's personnel as the military service, the service of sanitary personnel called upon to fight epidemics or the service of magistrates.[19] Professor Kasznica notes – a noteworthy view reflecting the social conditions of the time – that "this career is apparently sufficiently attractive due to the benefits it provides: assurance of subsistence, security of old age, a serious social position, participation in the exercise of state power, and so on."[20]

A momentous further attribute of the official relationship was its moral dimension. In this aspect, the author identified two overarching elements: "the duty of loyalty to the State" and "putting one's whole person at the disposal of the State". These are the issues that justify the civil servant's unique role in the structure of the state and society. These issues establish that their

14 Ustawa z dnia 21 listopada 2008 r. o służbie cywilnej [Act of 21 November 2008 on the civil service] [2022] JoL 1691.

15 Zarządzenie nr 70 Prezesa Rady Ministrów z dnia 6 października 2011 r. w sprawie wytycznych w zakresie przestrzegania zasad służby cywilnej oraz w sprawie zasad etyki korpusu służby cywilnej [Order No. 70 of the President of the Council of Ministers of 6 October 2011 on guidelines for observance of the principles of civil service and on the principles of ethics of the civil service corps] [2011] MP 93, 953).

16 D Długosz, 'Podstawowe zasady etyki urzędniczej' [Basic Principles of Official Ethics] in R Hauser, Z Niewiadomski, A Wróbel (eds), *Etyka urzędnicza i etyka służby publicznej* System prawa administracyjnego [Official Ethics and Ethics of Public Service, Administrative Law System] (CH Beck 2016) 267–268.

17 In addition to voluntary and professional public service, Kasznica also distinguishes between honorary, compulsory and private law (contract) service – S Kasznica (1946) 93–95.

18 Ibid., 88.

19 Ibid., 94.

20 Ibid., 88.

action is one of service and not of work, and that their legal status is governed by administrative law and not by private labour law. From the "moral" dimension of the civil servant relationship, the author derives the conclusions that a civil servant can only be a Polish citizen whose extent of loyalty to the state should be further strengthened by the service oath they take, and that a civil servant is obliged to perform service during office hours and, in an emergency, "at any time without any limitation".[21] State service was thus to be the civil servant's life profession and the basis of their material existence.

The ability to act for and on behalf of the state as its organ is another attribute of the official relationship. The author points out that acting as an official in such a capacity is tantamount to acting as a state. At the same time, he cautions that "the holding of an office, the exercise of official functions, is not a necessary component of the concept of an official: while inactive or in a state of retirement, an official does not occupy an office, but nevertheless does not lose the character of an official".[22]

Further elements of the civil servant relationship of a pragmatic nature were that the civil servant was subject to official authority and disciplinary responsibility,[23] had special professional training, carried out special duties and was subject to "restrictions on freedom not known to the general public (choice of residence, pursuit of side activities, expression of opinion, etc.)".[24] These were compensated for by the civil servant's claim to the state, e.g. the right to special protection, to a salary or to a pension.

This public service model, characterised by its ten nodal elements, is not only complete, but also based on logical assumptions. The starting point for its construction was a deep understanding of the essence of administrative law, as a branch of law of a public law nature. Its rules with general binding force permanently determined the legal situation of the official and thus guaranteed a certain independence from politics. This law was therefore not reactive; it did not respond to the demands of the civil servant community, nor to the harmful expectations of the political elite environment of enabling flexible changes in civil servant positions.

The public service model within administrative law has consistently adopted the attributes of this branch of law. The moral dimension of the civil servant relationship indicated by Kasznica directly fits into the catalogue of attributes of administrative law.[25] The inequality of the parties to the civil servant relationship alludes to the classical understanding of the administrative-law relationship,[26] and the compensations for civil servant limitations logically rewarded these issues.

Under current Polish law, elements from this catalogue have been preserved to the greatest extent in the uniformed services. In the day-to-day aspects of the civil servant corps, only completely unrelated, incidental fragments of the original model remain. Doctrinally, there has been a major paradigm shift, so that civil servant law has been appropriated by labour law. This has thus rendered meaningless, or unjustifiable, the retention in law of public law institutions such as appointment or disciplinary responsibility. Such a situation is unacceptable.

This is all the more true as, again, some echoes of the interwar model nevertheless shine through

21 Ibid., 89.

22 Ibid.

23 In the legal environment of the time, they were taken out of the control of the ordinary and administrative courts.

24 S Kasznica (1946) 89.

25 J Zimmermann, *Prawo administracyjne* [Administrative Law] (Wolters Kluwer 2018) 59–72, 547 et seq.

26 R Hauser, 'Stosunek Administracyjno Prawny' [Administrative and Legal Relationship] in R Hauser, Z Niewiadomski, A Wróbel (eds), *Instytucje prawa administracyjnego* System Prawa Administracyjnego [Administrative Law Institutions, Administrative Law System] (CH Beck 2015) 199 et seq.

in the current constitutional guidelines. Article 153 of the Fundamental Law,[27] indicates four elements as objectives for creating a civil service corps: professionalism, reliability, impartiality and political neutrality. By superimposing these attributes on the set formulated by Professor Kasznica describing the civil servant relationship, a distant convergence is discernible. The post-constitutional legislation has unfortunately not implemented these guidelines.

4. The problem of the private-law basis of employment in the public service

Professor Kasznica's reflections on the reasons and principles for engaging contract staff in the public service have remained remarkably relevant. Today, this problem is a knotty issue with which the legislature, the executive and those directly managing human resources in the public service are grappling. A glaring contemporary illustration of these problems is the issue of recruiting and adequately remunerating professionals in the field of information technology and new technologies,[28] substantive specialists of services, inspectors or guards[29] or highly qualified law or economy specialists. This problem concerns the public service in a broad sense, i.e. covering both service relations *sensu stricto* (including the military) and employee service relations.[30] The system of emoluments or the multiplicative or even still fragmentary system of remuneration on the basis of a post-company or company collective agreement, which is present in the practice of public administration, prevents the guaranteeing of market-based remuneration for these experts.

The public service of the interwar period faced similar problems. Professor Kasznica points this out straightforwardly, presenting a sub-type of the public service of the time, which he calls "private-law contractual service".[31] He delves into the problem of the motives behind the state's decision to engage employees in this form and the types of employees who are recruited in this mode.[32] In formulating a response to these issues, the author identifies two categories of people: those who are less qualified, engaged for short-term and seasonal work, and those who are "outstanding professionals with high professional qualifications".[33]

27 Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r. [Constitution of the Republic of Poland] [1997] JoL 78, 483: "Article 153 (1) In order to ensure professional, reliable, impartial and politically neutral performance of the tasks of the State, a civil service corps shall operate in the offices of government administration. (2) The Prime Minister shall be the head of the civil service corps."

28 T Zdzikot, 'Inwestycja, nie koszt' [An Investment, Not a Cost] (2022) Polska Zbrojna vol. 9, 89; see ustawa z dnia 2 grudnia 2021 r. o szczególnych zasadach wynagradzania osób realizujących zadania z zakresu cyberbezpieczeństwa [Act of 2 December 2021 on special rules of remuneration for persons performing tasks in the field of cyber security] [2021] JoL 2333 and rozporządzenie Rady Ministrów z dnia 19 stycznia 2022 r. w sprawie wysokości świadczenia teleinformatycznego dla osób realizujących zadania z zakresu cyberbezpieczeństwa [Regulation of the Council of Ministers of 19 January 2022 on the amount of ICT benefit for persons performing tasks in the field of cyber security] [2022] JoL 131.

29 This thesis is confirmed by the introduction of point and episodic legal solutions in the area of sanitary/epidemiological services: ustawa z dnia 16 kwietnia 2020 r. o szczególnych instrumentach wsparcia w związku z rozprzestrzenianiem się wirusa SARS-CoV-2 [Act of 16 April 2020 on specific support instruments in connection with the spread of the SARS-CoV-2 virus] [2020] JoL 689.

30 T Kuczyński, J Stelina, 'Stosunki służbowe i stosunki pracy z elementami służby w latach 1944–1989' [Service Relations and Labor Relations with Elements of Service in the Years 1944–1989] in R Hauser, Z Niewiadomski, A Wróbel (eds), *Stosunek służbowy* System Prawa Administracyjnego [Service Relationship, Administrative Law System] (CH Beck 2011) 78 et seq.

31 S Kasznica (1946) 94.

32 Ibid.

33 Ibid.

The justification provided for the state's motives in involving these categories of persons requires particular attention, as they are twofold. On a practical level, they are underpinned by financial arguments and common sense. The author points out that "a private-law contract opens the way for the relationship with the individual in question to be arranged in such a way as the specific circumstances in this case require",[34] and at the same time he relates this issue to highly skilled workers and the problem of providing them with an adequate salary, as well as to "completely unskilled workers, disposing only of their physical strength [with whom] it would not be advisable to establish [...] a public-law relationship due to the fact that on the basis of this relationship they would obtain a whole series of claims against the state, which would not be counterbalanced by the value of the services they provide to the state."[35]

In the doctrinal, i.e. purely theoretical dimension, Professor Kasznica refers to the system of law and the branch order. He unequivocally excludes the possibility of using a private-law contract for those positions to which the application of state authority is linked. He emphatically points out that "it is impermissible to use this route when it comes to filling an office connected with the exercise of public authority".[36] In such a case, he rules out the possibility of higher rates of remuneration for professionals, as the nature of administrative law precludes such differentiation. Indeed, the author notes that this would be ruled out because "the norms of civil servant law are absolute, rigid, allowing no exceptions or deviations".[37] Today, in an era of widespread instrumentalisation of administrative law, in particular clerical law, it is worth repeating this view as an excellent example of a serious treatment of legislation, i.e. based on a deep understanding of the essence of this branch of law, in terms of legal guarantees of a stable public service.

5. The idea of a single public service corps

Today, Professor Kasznica's pertinent thought seems to have been forgotten, that "the whole mass of civil servants – irrespective of their hierarchical ranking and distribution in various authorities – constitutes one compact corps, one body (bureaucracy), animated by a sense of solidarity, professional commonality, the important role it plays in society, – the spirit of corporate connectivity (*esprit de corps*)."[38] The idea of a single corps is not only a postulate from the field of public administration personnel management, but also from legal theory. It is pertinent on these theoretical grounds, since in its essence it touches upon the institution of the administrative-law relationship. In the case of the public service (in the sense of its model version), the parties to this relationship are the state and the individual. The rights and obligations of this individual are determined by the force of universally binding provisions of administrative law and thus the law characterised by the attributes of this branch of law.[39] The scope of these rights should in principle be analogous to the individual, regardless of the place of public service. An obvious distinction in this respect, resulting from the specificity of tasks, official position or responsibility held or knowledge and experience required, should also be regulated by the provisions of the law.[40]

34 Ibid., 95.
35 Ibid.
36 Ibid.
37 Ibid., 94.
38 Ibid., 165.
39 J Zimmermann (2018) 59–72, 547 et seq.
40 Rozporządzenie Prezesa Rady Ministrów z dnia 29 stycznia 2016 r. w sprawie określenia stanowisk urzędniczych, wymaganych kwalifikacji zawodowych, stopni służbowych urzędników służby cywilnej, mnożników do ustalania

The clerical law of the interwar period came very close to fully implementing this theoretical assumption. As Professor Kasznica writes, in addition to official pragmatics, this law was complemented by the law on providing pensions[41] (to which professors, public school teachers, judges, prosecutors, professional military officers, state police and border guards and postal officers were also subject), regulations on disciplinary proceedings, on associations of state employees and on emoluments.[42] In spite of the existence of formally different types of public service, different names of persons performing this service[43] and different places where official tasks are performed, the author had no doubt about the fact that the official law of that time was "completely almost educated, in a large part of its provisions stabilized"[44] or about the existence of one common official corps.

In contemporary public discourse, the topic of a civil servants' code for a wider range of subjects than just the civil service returns regularly.[45] The authors of these postulates float visions of merging selected segments of public administration personnel under a single act – most often by extending the regulations on civil service to local government employees as well as employees of state offices. The argumentation usually boils down to a desire to increase the prestige of the remaining clerical groups by increasing their rank in the state and providing increased guarantees of apoliticality or mechanisms for valorisation of clerical salaries. It is difficult to find a justification for such changes that would be anchored in legal theory and doctrine, let alone one that would be the result of correct legal inference from the assumptions of the legal system and the branch of administrative law. This area is today an example of the total instrumentalisation of law and its reactivity, devoid of deeper legal reflection.

6. Concluding remarks

Complementing the above attempt to look at the pre-war dogmatics of clerical law through the lens of today's legal solutions, it is worth quoting an excerpt from Professor Kasznica's reflections, confirming this time not only his in-depth understanding of the theory of administrative law, but his full awareness of the practical, everyday problems and obstacles in applying these provisions. As he noted:

wynagrodzenia oraz szczegółowych zasad ustalania i wypłacania innych świadczeń przysługujących członkom korpusu służby cywilnej [Regulation of the President of the Council of Ministers of 29 January 2016 on the determination of official positions, required professional qualifications, official ranks of civil servants, multipliers for determining remuneration and detailed rules for determining and paying other benefits to which members of the civil service corps are entitled] [2021] JoL 689.

41 Ustawa z dnia 11 grudnia 1923 r. o zaopatrzeniu emerytalnem funkcjonarjuszów państwowych i zawodowych wojskowych [Act of 11 December 1923 on the provision of pensions for state functionaries and professional military officers] [1924] JoL 6, 46.

42 S Kasznica (1946) 90.

43 E.g. "civil servant", "officer" or "contractual employee".

44 S Kasznica (1946) 90.

45 H Szewczyk, 'Propozycja samorządowej służby cywilnej' [Proposal for Local Government Civil Service] in M Stec (ed), *Stosunki pracy pracowników samorządowych* [Labor Relations of Local Government Employees] (Wolters Kluwer 2008) 141 et seq.; G Grosse, 'Czy w Polsce powinna powstać samorządowa służba cywilna?' [Should a Local Government Civil Service be Established in Poland?] (2000) Samorząd Terytorialny vol. 7–8, 62 et seq.; T Mordel, 'Samorządowa służba cywilna. O potrzebie normatywnych gwarancji profesjonalizmu pracowników urzędów samorządowych' [Local Government Civil Service. On the Need for Normative Guarantees of Professionalism of Employees of Local Government Offices] (2004/2005) Służba Cywilna vol. 9, 93 et seq.

> the law, by the very fact of its existence, does not protect the citizen against lawlessness; it does not enable administrative bodies to commit unlawful acts. And the reason for this is simple and clear: the law is put into practice by officials, and they – as 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, bending the law to party requirements.[46]

In attempting to answer the question of what contemporary administrative law has lost from Prof. Stanislaw Kasznica's views on public service, it must first be stated that his views referred to a complete, well-thought-out model of public service, whose legal context was determined by the provisions of the then complete and consistent civil service law. This law had an unambiguously public-law identity and such legal institutions. The civil servant's role and place in the public service and in the state determined the administrative-law relationship. Restrictions on rights and freedoms were compensated for by adequate benefits, including a special pension emolument. Supervision of the civil servant's actions and attitude was carried out by internal public administration bodies or an administrative tribunal. This system was complete, logical and consistent. Professor Kasznica, in faithfully reconstructing this model, perfectly enriched his considerations by illustrating them with additional references to the practice of the day-to-day operation of the pre-war administration and civil servant corps.

However, the post-war edition of Professor Kasznica's book was published at a time that marked the beginning of the end of this institution of law. In fact, the whole post-war history of Polish civil service law up to the political transformation was a history of the degradation of civil service law and of the civil servant ethos. The repeal of the 1922 State Civil Service Act by the Labour Code in 1974 was only a formal elimination of this act from legal circulation.[47] Also in post-transformation legislation, after a tentative attempt to rebuild the civil service in the public-law model in 1996, each successive act made a breach of the public-law model. This occurred, *inter alia*, through the elimination of civil service bodies from the legal order by the 1998 Act, the decapitation of the civil service corps through the establishment of the state personnel pool in 2006 and, finally, the absolute approximation of civil servant status to employee status by the 2008 Act (exacerbated by a momentous amendment in 2015, by which the "appointment", alien to civil servant law, was introduced as a basis for employment).[48]

Today it is difficult to speak of Polish civil service law. The laws in force regulating the legal status of members of the civil service corps, local government employees or employees of state offices are a set of legal norms that do not form any meaningful model in which the essence of the public service could be found. Fragmentary public-law elements, even if they have not yet been eliminated from these laws, are in practice applied contrary to their spirit. Point of view of labour law also encroach on the area of service relations *sensu stricto*, including even military relations. The dominance of these optics distorts the sense of public service, negatively affects

46 S Kasznica (1946) 155.

47 This paradigm shift, initiated immediately after the war and conditioned by ideological assumptions, was called the current "from clerical law as public law to labour law as common law". The new principles boiled down to arrangements for immediate hiring and firing, civil servant pay at the level of a worker's wage and rotation in administrative positions.

48 Each time, the drafters' interventions were justified by the need to "make more flexible" the operation of the civil service corps, the declared search for savings and the need to return to solutions changed by predecessors. However, the justifications for the drafts of the aforementioned acts were devoid of the most important reflection, namely a coherent, far-reaching concept of the target model of the civil service, detached from the current political dispute.

the awareness of those subject to these laws as to their role and duties in the state and influences the dysfunctions of the practical operation of public administration, which is particularly noticeable in crisis situations. In the face of recent global and geopolitical crises, it is high time, in my opinion, to direct public attention to the issue of the correct model of public service. Then, perhaps, the moment will come when the views presented by Professor Kasznica will become a treasury of ready recipes for a perfect restoration of this institution of law.

References

Literature

Długosz D, 'Podstawowe zasady etyki urzędniczej' [Basic Principles of Official Ethics] in R Hauser, Z Niewiadomski, A Wróbel (eds), *Etyka urzędnicza i etyka służby publicznej* System Prawa Administracyjnego [Official Ethics and Ethics of Public Service, Administrative Law System] (CH Beck 2016) 263–292.

Drobny W, 'Przenikanie się prawa konstytucyjnego, prawa pracy i prawa administracyjnego na przykładzie polskiego prawa urzędniczego w świetle orzecznictwa (zagadnienia wybrane)' [The Interpenetration of Constitutional Law, Labor Law and Administrative Law Using the Example of Polish Civil Service Law in the Light of Jurisprudence (Selected Issues)] (2018) Studia Prawnicze no. 5 spec, 213–226.

Górzyńska T, Drobny W (eds), *Polskie prawo urzędnicze – kryzys tożsamości?* [Polish Clerical Law – Identity Crisis?] (CH Beck 2016).

Grosse G, 'Czy w Polsce powinna powstać samorządowa służba cywilna?' [Should a Local Government Civil Service be Established in Poland?] (2000) Samorząd Terytorialny vol. 7–8, 61–70.

Hauser R 'Stosunek Administracyjno Prawny' [Administrative and Legal Relationship] in R Hauser, Z Niewiadomski, A Wróbel (eds), *Instytucje prawa administracyjnego* System Prawa Administracyjnego [Administrative Law Institutions, Administrative Law System] (CH Beck 2015) 199–218.

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

Kopczyński J, *Przepisy normujące stosunek państwowej służby cywilnej* [Provisions Regulating the Relationship between the State Civil Service] (Drukarnia Techniczna 1925).

Mordel T, 'Samorządowa służba cywilna. O potrzebie normatywnych gwarancji profesjonalizmu pracowników urzędów samorządowych' [Local Government Civil Service. On the Need for Normative Guarantees of Professionalism of Employees of Local Government Offices] (2004/2005) Służba Cywilna vol. 9, 93–104.

Radwan A, 'Służba cywilna wymaga reformy na wzór tej sprzed 100 lat' [The Civil Service Requires Reform Along the Lines of the One 100 Years Ago] (2022) Dziennik Gazeta Prawna no. 33, B7.

Stelina J, Kuczyński T, 'Stosunki służbowe i stosunki pracy z elementami służby w latach 1944–1989' [Service Relations and Labor Relations with Elements of Service in the Years 1944–1989] in R Hauser, Z Niewiadomski, A Wróbel (eds), *Stosunek służbowy* System Prawa Administracyjnego [Service Relationship, Administrative Law System] (CH Beck 2011) 78–94.

Szewczyk H, 'Propozycja samorządowej służby cywilnej' [Proposal for Local Government Civil Service] in M Stec (ed), *Stosunki pracy pracowników samorządowych* [Labor Relations of Local Government Employees] (Wolters Kluwer 2008) 141–157.

Zdzikot T, 'Inwestycja, nie koszt' [An Investment, Not a Cost] (2022) Polska Zbrojna vol. 9, 89.
Zimmermann J, *Prawo administracyjne* [Administrative Law] (Wolters Kluwer 2018).

List of legislative acts

Ustawa z dnia 11 grudnia 1923 r. o zaopatrzeniu emerytalnem funkcjonarjuszów państwowych i zawodowych wojskowych [Act of 11 December 1923 on the provision of pensions for state functionaries and professional military officers] [1924] JoL 6, 46.
Konstytucja Rzeczypospolitej Polskiej z 2 kwietnia 1997 r. [Constitution of the Republic of Poland] [1997] JoL 78, 483.
Ustawa z dnia 21 listopada 2008 r. o służbie cywilnej [Act of 21 November 2008 on the civil service] [2022] JoL 1691.
Zarządzenie nr 70 Prezesa Rady Ministrów z dnia 6 października 2011 r. w sprawie wytycznych w zakresie przestrzegania zasad służby cywilnej oraz w sprawie zasad etyki korpusu służby cywilnej [Order No. 70 of the President of the Council of Ministers of 6 October 2011 on guidelines for observance of the principles of civil service and on the principles of ethics of the civil service corps] [2011] MP 93, 953.
Rozporządzenie Prezesa Rady Ministrów z dnia 29 stycznia 2016 r. w sprawie określenia stanowisk urzędniczych, wymaganych kwalifikacji zawodowych, stopni służbowych urzędników służby cywilnej, mnożników do ustalania wynagrodzenia oraz szczegółowych zasad ustalania i wypłacania innych świadczeń przysługujących członkom korpusu służby cywilnej [Regulation of the President of the Council of Ministers of 29 January 2016 on the determination of official positions, required professional qualifications, official ranks of civil servants, multipliers for determining remuneration and detailed rules for determining and paying other benefits to which members of the civil service corps are entitled] [2021] JoL 689.
Ustawa z dnia 16 kwietnia 2020 r. o szczególnych instrumentach wsparcia w związku z rozprzestrzenianiem się wirusa SARS-CoV-2 [Act of 16 April 2020 on specific support instruments in connection with the spread of the SARS-CoV-2 virus] [2020] JoL 695.
Ustawa z dnia 2 grudnia 2021 r. o szczególnych zasadach wynagradzania osób realizujących zadania z zakresu cyberbezpieczeństwa [Act of 2 December 2021 on special rules of remuneration for persons performing tasks in the field of cyber security] [2021] JoL 2333.
Rozporządzenie Rady Ministrów z dnia 19 stycznia 2022 r. w sprawie wysokości świadczenia teleinformatycznego dla osób realizujących zadania z zakresu cyberbezpieczeństwa [Regulation of the Council of Ministers of 19 January 2022 on the amount of ICT benefit for persons performing tasks in the field of cyber security] [2022] JoL 131.