**THE LAW ENFORCEMENT BY PUBLIC AUTHORITIES**

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## THEORETICAL CONCEPTS OF THE LAW OF CIVIL SERVANTS

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The subject. The article examines the conceptual foundations of the legal status of civil servants in the legal systems of Europe and the United States.

The purpose of the article is to confirm or disprove hypothesis that there are common concepts and models of the law of civil servants for different legal systems.

The methodology of the study includes general scientific methods (analysis, synthesis, description) and the method of comparative law.

The main results and scope of their application. It is determined that the body of persons working for the state is diversified. Within it, three main groups can be distinguished: the political corps, professional public servants (officers) and auxiliary (service) staff. The author postulates that various theoretical models of civil servants' rights are closely related to the problem of their position in the legal system. The place in the legal system depends on whether the position of all persons employed in the public sphere is considered as generally public law, or whether the law of public servants is regulated by both administrative and labour law in different proportions depending on the legal system. At the present stage, there are also trends aimed at establishing some rules similar to those that regulate entrepreneurial activity in a free market in the sphere of public administration. The concept of the so‐called new public administration is among the most important ideas of this kind.

Conclusions. The author found that the existence of different models of public service in different legal systems does not exclude the definition of some general models of the law of public servants. The most important in that respect is their division according to the nature of employment of civil servants. In countries that have not undergone dramatic political transformation, the concept of the law of public servants as part of public law is commonly accepted – consequently, public servants are regarded as public officers, their employment having the nature of a service. Such a model of public servants law is generally encountered in countries of the Western Europe. The situation is more complicated in countries where there was a political system of “real socialism”, for example, in Poland. Since the 1970s the law of public servants is part of labour law there, public servants being, from the formal point of view, employees with whom employment relationships are concluded, mostly using the tool of the contract of employment. It is worthwhile to observe that no decision to restore earlier solutions was made after the political changes of the year 1989.

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1. **Introductory remarks**

In each and every country organisational matters of the state machinery (apparatus) count among the key ones. In order to meet its tasks best, the state needs specific structures (offices and other institutions), equipped with the legal competences to carry out the tasks on its behalf. The structures constitute a certain system regulated by law (the constitution and statutes). Not less important is the way in which staff matters are provided for (i.e. what the status of the public servants and officers is like). After all, the state and its organisational structures do not exercise the competences with which they are vested through some abstract creations and legal constructions. It is people, occupying various state positions, that take actions producing legal effects. Often, in the social awareness, recognised as the state and its bodies are, actually, not specific institutions, but all those who hold public offices and act on behalf of the state. Due to the legal regulations in force, their activity is attributed to the state. Therefore, without the human factor, none of the organisations could function, and the quality of the actions taken depends on the level of the persons performing these activities.

The body of those working for the state is diversified. Within it, three main groups can be distinguished: a) the political corps, b) the body of professional public servants (officers) and c) the body of ancillary (service) staff.

Within each of these corps specific problems arise, regarding the employment of the officers and employees. Discussed in the paper are major issues related to the employment of those falling within the two initial bodies mentioned above (the political corps and the corps of public servants)[[1]](#footnote-1).

1. **The political corps**

As far as the political corps is concerned, the body is formed from, first of all, the persons that hold most important positions within the structures of the state, related to the exercise of the state power. A separation of the spheres of administration and politics is nowadays regarded a standard solution within the state ruled by law. The specificity of the service done at the highest state positions usually results in the persons enjoying a special legal status. Most often, the positions are filled applying the political criterion. The politicians that occupy the positions are either elected (directly or indirectly) or appointed, their rights and duties following directly from the constitution or laws which provide for the system of government. Such is the situation, for example, in Germany, where persons like the federal president, members of the federal government and governments of individual German *Länder*, parliamentary secretaries, members of the federal Parliament (*Bundestag*)and *Landtage* (parliaments of parts of the federation) do not remain in a service relationship but in a public-law official relationship, provided for by the constitutions and special Acts of Parliament. A specific legal status, provided for by separate laws, is also enjoyed by professional soldiers and judges[[2]](#footnote-2). Similarly, in France, the category of public servants (officers) does not include persons elected under political election schemes, nor members of the state’s executive power (e.g. President of the Republic, members of government). These persons have a special legal status[[3]](#footnote-3). Not much different is the situation in Spain, where deputies to the national Parliament and regional legislatives, members of the central and regional governments, mayors and councillors, as well as persons holding positions with the agencies and bodies provided for by the constitution (e.g. the Constitutional Tribunal, General Council of the Judicial Power, Court of Auditors etc.) have a special legal status established by law, meaning that they are not public servants[[4]](#footnote-4).

Meanwhile, in Russia, a special category of state positions has been distinguished (being positions specified by the Constitution of the Russian Federation, federal laws directly providing for competences of the federal agencies and positions, established by laws and regulations, to directly exercise powers of the state agencies or public-law bodies being parts of the Russian Federation). Examples include President of the Russian Federation, Chairman of the Council of Federation of the Federal Assembly, Chairman of the State *Duma* of the Federal Assembly, President of the Government of the Russian Federation, federal minister, judge of the Constitutional Tribunal of the Russian Federation, judge of the Supreme Court of the Russian Federation, judge of the Supreme Court of Arbitration of the Russian Federation, judge of a federal court, General Public Prosecutor of the Russian Federation and others. People occupying the positions do not have the status of a public servant[[5]](#footnote-5). Similar regulations provide for the status of persons holding the highest state functions in the Czech Republic[[6]](#footnote-6), the United Kingdom[[7]](#footnote-7) and Ireland[[8]](#footnote-8).

As regards Poland, those occupying political positions are granted, in principle, a special legal status, being thus neither employees within the meaning of the labour law legislation nor the officers provided for by the administrative law. In legal writings, the concept of so-called constitutional law occupation has been adopted to them, meaning that it is the Constitution or special laws that are directly applicable to the persons, not labour or administrative law. By way of example, indicated as having such a special legal status under Polish law are: President of Poland, the Prime Minister, Members of *Sejm* (the first Chamber of the Parliament), senators, councillors of local government assemblies, the Ombudsman etc. The persons in question remain in so-called organisational legal relationships including rights and duties related to performance of the tasks of the agency (body) in question and, to very limited extent, also employment-related rights. The latter concern, for example, the remuneration provided for by the Act on Remuneration of Persons Holding State Executive Positions (and, as regards members of the legislative chambers, benefits determined by the Act on the Performance of the Mandate of Deputy or Senator). A specificity occurring in Poland is recognition of the those performing the function of bodies of the local government units (e.g. mayors) as public servants and employees within the meaning of the labour law.

It can be thus rightly stated that despite the many differences existing between individual countries, as regards employment in the public sphere the rule is that a distinction has to be made between the executive (administrative) area for which public servants are responsible and the sphere of political operation of those who take the highest state positions or sit on the legislative bodies. Such persons enjoy a special legal status. Should it be assumed that they stay employed, the relevant legal relationship are, in any case, neither employment nor service relationships. It is customary in Poland to refer to them as the „relationships of constitutional (governmental) employment”[[9]](#footnote-9).

1. **The body of public servants (officers)**

The largest group of those employed at state institutions (and, at the same time, the most vital one for the efficient operation of the structures) is public servants. Their legal status depends on the legal pattern of employment in public service, as followed in a specific country. It is thus well-worth indicating that two fundamental models are, in principle, applied in that respect worldwide: that of labour law employment and that of service, with two different types of legal relationships under which occupation is provided being applied (the employment relationships and service relationships). The differentiation refers to the traditional division of the legal system into private and public law, reflected – as far as doing work is concerned – in the division made between private and public schemes of employment. The criterion of delimitation in that respect is the nature of the employer – under private law, employment takes place under contractual employment relationships established with private employers, while in the public sector, where it is the state or its organisational units that are being worked for, service relationships are established, bearing public-law (administrative) character. The said means the existence, within the legal system, of two separate regimes concerning employment – the labour law (falling, in essence, into the category of private law) and the civil servant law (usually regarded as part of the public law). As regards the terminology used, those employed under the labour law regime are referred to as employees, whereas those remaining in the relationships of service are called public servants or officers.

The division of the law, under which employment takes place, into labour law and the law of public servants has a long tradition. It was formed in the West of Europe in the latter half of the 19th century and in many countries continues to date. For instance, in Germany, the public service in its narrow meaning includes, first of law, public servants (*Beamte)*; within the broad meaning, however, also judges and permanently employed professional soldiers. A similar system exists in France. Public servants remain in public-law employment (i.e. bonds of work done under a public law scheme, based on an act of appointment, which means that they are not, as a rule, subject to labour law regulations). Roughly speaking, the civil service is divided into three branches: that state, territorial and the hospital service. Each of them has an independent statute of its own, being an act of public law nature[[10]](#footnote-10). Consequently, the civil servants do not form a homogenous group[[11]](#footnote-11). Also in Spain work is done either under public or private law, although, due to many factors, promotion of certain solutions from the field of labour law (e.g. concerning trade unions)[[12]](#footnote-12) can be observed nowadays. The law of public servants (*derecho de la función pública*) covers natural persons included in the state machinery (apparatus), the public servants themselves (*empleo público*) in particular,

Similar legal solutions were in force in Poland until World War II. Referred to as the law of public servants were, first of all, legal regulations of the state (mostly civil) service, the main piece of legislation from the field being the Act of 17 February, 1922 on the State Civil Service. Under the Act, the legal relationships between the citizens performing various public tasks were termed service relationships and had public-law nature, which quality stemmed expressly from the law. The legal solutions were modelled after the German law of civil servants developed at the end of the 19th century. It is well-worth observing, though, that in the earlier period the employment of civil servants was qualified in terms not unfamiliar to the civil law. In particular, contractual[[13]](#footnote-13) or mixed (combining private and public law)[[14]](#footnote-14) elements were seen within it. The views resulted mostly from the fact the that private (civil) law, based on the Roman law, being better developed than the public law, provided a whole array of ready-made legal solution whereby the legal situation of state officials (the “ruler’s servants”) could be explained. It was only O. Mayer who, in the latter half of the 19th century, broke up with the view and founded the theory of a service relationship as a public-law one, based on an administrative act.

And thus, under the Act on the State Civil Service of 1922, all persons employed by the state were public officers, their employment being based on service relationships. A distinction was, however, made between the military service and civil service, hence regarded as public servants were those employed in all state entities save for military units. As a result, the category of public servants included, besides persons working for administrative agencies, also state school teachers, railwaymen, foresters, postal service employees etc. Their service relationships were established upon acts of appointment (and not employment contracts), which meant – on the one hand – high requirements regarding professional qualifications (education) and enhanced employment stability, whereas – one the other – that the persons were subject to the disciplines of official availability and disciplinary responsibility. And thus civil servants were protected against dismissal, but had to take into account a possibility of being transferred to other organisational entities in the event of justified needs; they were also subject to higher ethical standards. Having reached a specified age or length of service, the public servants were entitled to a pension received from the state. Generally speaking, having the job of a public servant enjoyed at that time a high social prestige and secured professional and financial stability to the person.

The situation changed dramatically after the end of WWII. In the new political conditions the model of public servant employment based on stabilisation and high educational requirement could not be accommodated in the authoritarian system of power which aimed at getting rid of the highly qualified pre-war public servants from the state apparatus. To replace them, new persons were established at the positions, under the “upward social mobility” arrangements, which move was supposed to create a body of state officers devoted to the new political regime. Hence the public-law model of employment of public servants did not fit into the existing realities and expectations of the new regime. The service relationships of public servants were changed. On the one hand, the existing law was amended to eliminate the solutions undesirable for the authority (elimination of high educational requirements and abandoning stabilisation of employment, for example), on the other – contracts of employment were implemented in the administration on a wide scale (instead of the earlier applied acts of appointment). This meant formal coexistence of two different regimes of employment in administrative agencies – the public-law one, based on a modified service relationship (to which the Act of 1922 on State Civil Service Applied) and the private-law regime, with employment relationships based on the contract of employment. The differentiation was purely formal, though, as in practical terms the legal situation of all persons doing their job for state agencies was identical. The legal dualism of employment in administration was finally abandoned as of 1 January, 1975. It was at that time that the Labour Code, having covered also those working for state offices, entered into force. The Act of 1922 on the State Civil Service lost force and the formal distinctness of the public servant law was abolished as a result, the employment of public servants having been made entirely subject to labour law regulations. Public servants were turned into employees and the service relationships in which they remained before were transformed into employment relationships entered into by means of contracts of employment. The ideologically-driven process of liquidation of a distinct corps of public servants was thus completed, their situation being provided for by the same regulations that concerned those employed in industry or commerce.

It is worth emphasising, though, that not all of those employed in the public sphere were affected by the process to the same extent. Certain differences were retained as regards state employees not working in public administration (e.g. teachers, railwaymen, foresters etc.) who were recognised as employees within the meaning of the labour law, although were still employed under acts of appointment, not employment contracts. What matters, however, is that the professional status of officers of so-called uniformed services (e.g. soldiers or militiamen) was not changed. They did not become employees subject to labour law regulations but kept their status as people in service (including also pension privileges). As a result, employment in the public sphere lost its homogenous character which it had before WWII and in the first years after the war. The classical legal architecture of a service relationship was retained only as regards members of the security apparatus; others became employees whose status was close to those employed outside public administration.

It is interesting to note that the dualism of employment in the public sector, as introduced in 1970s (i.e. in the times of what was termed as the “real socialism”) was preserved in Poland also after the political transformation took place thirty years ago. And thus, persons employed in the public administration have now the status of employees within the meaning of the labour law, whereas officers of the armed forces, police and other militarised services remain in public-law service relationships. This means that public servants are governed by the labour law, usually qualified as a branch of private law. Yet regulations of the common labour law (the Labour Code) apply to them in matters not provided for by specific regulations, for the legal status of public servants in Poland is regulated, in the first turn, by the Acts of Parliament that are addressed directly to them. Officers of the uniformed (militarised) services are covered by regulations of the administrative law – a branch of public law.

1. **Theoretical models of the law of public servants**

The question can thus be raised how the law of public servants can be defined now, what its personal scope is and how it is situated within the system of law. As noted above, various concepts of the law are possible in modern world. It seems that three theoretical approaches can be distinguished[[15]](#footnote-15).

(1) In the broadest of those, covered by the law of public servants are all persons employed in the state sphere, i.e. in all offices, institutions and other state organisational entities, regardless of the tasks performed by a specific entity. Public servants in the broadest meaning of the term would thus include both those working for public administration offices, public officers (policemen, soldiers, officers of the Frontier Guard, state Fire Brigade, Prison Guard etc.) and other state employees (teachers, social workers, employees of state agencies etc.). That concept of the law in question comes down to separating all state employees as a single group and making them subject to roughly the same legal regime. Under this approach, all legal relationships of persons working for state entities should be uniformly regulated by a general statute concerning public servants, it not being ruled out that the legal status of some groups of them would still be provided for by special Acts of Parliament. However, in such case the general law on public servants (the Code of Public Servants) would apply in matters not provided for by special laws. The law of public servants would thus most often be regarded as part of the administrative law and expressly put in contraposition with the law of employees of the private sector, i.e. the labour law. As already mentioned earlier, such a way of delimitation of the law of public servants was followed in Poland before WWII. The legal doctrine stated that recognised as the servants should be all persons appointed to provide public services; the notion of a public servant was, in fact, often identified with that of a state employee. The Act on State Civil Service of 1922 expressly excluded from its scope of application certain groups of state employees (judges, public prosecutors, court trainees, employees of the state railway company, staff of the Polish Post, Telegraph and Telephones, teachers of all state schools) and applied to some other (*inter alia* officers of the State Control, policemen, customs officers and prison guards) only in the alternative. The groups expressly excluded from the personal scope of application of the Act were thus ones which fell into the category of the state civil service, although their legal status was provided for separately.

The concept of the law of public servants in question is still adopted in certain European countries. For instance, under the German law, the state civil service includes persons employment by a public-law legal body, i.e. the Federation, individual *Länder* as parts of the federal state, other public law bodies (e.g. municipalities and counties), public law establishments and foundations. The criterion for classification into public service does not thus lie in the nature of the activities carried out but in the type of the entity to which the service is provided[[16]](#footnote-16). Similarly, in France, the entirety of persons employed by the state are covered by public law (*droit de la fonction publique*), but only part of them enjoy the status of “civil servants”[[17]](#footnote-17). Legal regulations close to the French ones are in force in Spain as well[[18]](#footnote-18).

(2) In a somewhat narrower meaning, the law of public servants should be associated only with the performance of public functions. In that sense the law in question would cover both persons working for public offices and those doing state service. The law of public servants would thus be the law of employees of state administration and public officers, and would include regulations providing not only for the status of public servants sensu stricto, but also persons performing the functions of state authorities, judges, public prosecutors and officers of militarised services. Outside the sphere of application of the law of public servants would remain those employed in the broadly termed public sector, but not involved in direct performance of state functions (e.g. teachers, employees of state-owned enterprises of business agencies). If the author properly understands the nature of employment in Russia’s public sphere, it is just in Russia that we are dealing with such an approach to the law of public servants. The so-called service law (служебное право) is part of the public law and includes: civil service (гражданская служба), legal protection service (правоохранительная служба), military service (*военная служба*) and municipal service (муниципальная служба)[[19]](#footnote-19).

(3) And, finally, the law of public servants in its narrowest meaning would only concern employment in public administration offices. This is how the law was defined in Poland - as mentioned, it shows close affinity with the notion of a “public administration office”. The term is ambiguous. In the administrative scholarly writing at least two meanings are assigned to it. According to the first of those, the office is a set of autonomous competences (like the case is with the minister, governor etc.) identified in colloquial language with the position or even with the agency itself[[20]](#footnote-20). However, from the perspective of the public servant law crucial is the other meaning of the office, according to which it is an organised unit accompanying the relevant administrative agency and called into being to carry out the agency’s tasks and competences under the authorisation granted to individual members of the office’s staff by the administrative agency directly superior to them and within the limits of the authorisations[[21]](#footnote-21). The office is thus an organised unit of ancillary nature, putting together all the staff and material resources performing the functions of support to the administrative agency (the ministry being a good example). Not all those employed in an office can be recognised as public servants. Putting aside persons playing the role of the agencies, who are reckoned towards the political corps (as already mentioned above), the entirety of the persons working for the administration offices and public authorities can be divided into public servants and the supporting and technical staff.

1. **The place of the law of public servants within the legal system**

The various theoretical models of the law of public servants are closely related to the problem how it is situated within the legal system. Generally speaking, it can be assumed that in the systems where covered by the law are all persons employed in the public sphere (variant 1 – the broadest), it is part of the administrative law and is thus qualified, in its entirety, as public law. As a rule, regulations of labour law do not apply to public servants. Definitely, the evolution of the legal system as a whole results in the gradual lessening of the rigidity of the differentiation between public and private law, the fact concerning also issues of employment. Hence, for a long time, penetration of elements drawn from the classical labour law into the employment schemes of public servants can be observed. The process, sometimes referred to as the „labourisation” of the law of public servants, could be observed, at its earlier stage, as regards the right to form trade unions[[22]](#footnote-22), and now it has been extended onto issues like protection of maternity and parenthood or prohibition of discrimination. As far as the narrow approach (taken in Poland) is considered, it is being assumed that the law of public servants is part of the labour law. The qualification results from the normative shape of the legal relationships in which public servants employed in public administration remain (in Poland – earlier the service relationships, and employment relationships now). There is no doubt that the affinity of a specific group of legal regulations (the law of public servants in the discussed case) to this or that branch of law determines the nature and scope of operation of general principles of a specific normative sub-system within it. After all, it is not without meaning if we are dealing with public law (with its rigid statutory regulations, essential role of the state and predominance of the public interest over that individual) or with private law, to a higher degree respecting the value of personal liberty of individuals. Hence qualifying the law of public servants using the categories of labour law does not only have terminological meaning, but is also of importance for the way in which structures of the legal branch in question are viewed and operate.

There is no doubt that reckoning the law of public servants towards labour law does not necessarily lead to bridging the differences between the status of public servants and other employees. Legal arrangements of labour law are sufficiently flexible to allow shaping, within their framework, specific legal ties without infringement of their essence. This is why in Poland, as mentioned earlier, apart from the Labour Code there exist also specific regulations concerning solely public servants. The regulations of the Labour Code are then applicable in matters not provided for by the specific regulations (*lex specialis derogat legi generali*).

As regards the above mentioned variant 2, different approaches are feasible – the law of public servants can be part of both the administrative law and labour law. Making it a separate branch of law (the “service law” cannot be ruled out, either).

1. **Models of employment of public servants**

A presentation of public servant law models must also include the issues of employment of persons that form the state’s administrative apparatus. Globally, in that respect two basic models are followed – the (professional) career model and the model referred to as the position-related one. The former is based on a predetermined and legally guaranteed path of official career. The person that starts working in the administration is included in the body of public servants, to do the job at a position lowest in rank and then, in an evolutionary way, through professional promotion may occupy ever higher positions. The career model implies employment of the person on behalf of the state, making the person attached by legal relationship to the latter (and not a specific office). The employment is, ultimately, a solution for the entire working life, until the reaching of the retirement age. An early breaking the legal tie between the public servant and the state is possible (apart from optional resignation from service) for disciplinary reasons. Stabilisation of employment is accompanied by the public servants being offered a high socio-economic status. The model of professional career is typical of many European countries, including France[[23]](#footnote-23), Germany, Austria, Belgium, Greece, Spain, Ireland, Portugal etc.[[24]](#footnote-24).

Characteristic of the position model is its higher flexibility. The solution consists in the public servant being engaged to a specific position and not the body of public servants as such. Consequently, the person is employed on behalf of a specific office – not the state[[25]](#footnote-25), the public servant being closely attached to the position and the tasks assigned. In connection with that, under the position model it is the specialist knowledge, specific qualifications and experience that is of importance, general education or the length of service being of lesser meaning. Also the remuneration granted to public servants is more diversified, the rules concerning it being more flexible. In Europe the position model is followed in the Nordic countries, the Netherlands, Italy and the United Kingdom. An extreme variance of the model is the so-called spoils system, typical of the USA. Its characteristic feature lies in the winning political party (person) being given freedom to distribute part of positions within the administration among its followers. The system was introduced, for the first time, by the US president, A. Jackson, under the slogan “to the victor belong the spoils”, in 1829”[[26]](#footnote-26). With time, however, the wide application of the political criteria at the appointment to civil servant positions proved to be impractical and corruptive, hence the system was considerably limited at the end of the 19th century.

Operation of the state and its officers (public servants) is subject to a special public law regime. According to traditional views, the state remains in imperious relationships with the citizens, which means that the state agencies determine legal situation of individual citizens and other entities by means of unilateral decisions which are not subject to negotiations. Private law arrangements (like contracts) are not present in relationships between the state and the citizens. As mentioned above, the doctrine, when applied to the relationships with public servants, resulted in the servants not being employees within the meaning of the labour law, but officers. The civil servants were appointed by means of unilateral decisions, no contracts of employment being concluded with them.

In modern states the doctrine gradually erodes. It should be indicated, first of all, that non-imperious forms of action are ever more often employed by the state (contracts instead of decisions, hard law being replaced by soft law). One of aspects of the phenomenon consists in introducing market mechanisms in the operation of the state, which fact can also be noticed in the functioning of the state administration. Against that background it is worthwhile to mention the trends aimed at establishing, within the administration, certain rules analogous to those governing business done under free market conditions. Among particularly essential ideas of the kind the concept of the so-called new public management (NPM) should not be overlooked. It consists in a set of legal and organisational solutions, the basic purpose of which lies in the improvement of public services provided by, *inter alia*, the state’s administrative system. In Europe, the idea got extremely popular and attained the largest outreach in the United Kingdom during M. Thatcher’s prime ministership. The key trait of the idea of the new public management is its reference to the business management standards in the private sector and possibly widest application thereof in the broadly termed sphere of public actions (including public administration), as the NPM doctrine assumes focusing on management (and not on politics), on creation of a system of evaluation and efficiency of activities. Another element of the doctrine is distribution of the state tasks among various agencies whose mutual relations resemble market ones. Reference should be made to competition in that respect (by employing, *inter alia*, quasi-market tools, promotion of agreements in administration and a new management style, based on clear identification of goals, service contracting, financial incentives and greater freedom in decision-making). This is supposed to improve efficiency of administration and reduce the costs of its operation[[27]](#footnote-27). The leading slogans of NPM are thus consumerisation, contractualisation and depoliticisation of administration[[28]](#footnote-28). NPM therefore strives to attain a „better authority for smaller money”, as a catchy slogan reads[[29]](#footnote-29).

From the point of view, presented in this paper, important is the fact that certain implications are derived from the NPM doctrine also as far as the law of public servants is concerned. The most essential of those is a trend towards blurring the differences between the work done in the public and private sector, and the way in which employment in public sphere is arranged in various countries (the double convergence process)[[30]](#footnote-30). The issue is about reduction of the number of those employed under the professional career model in the general number of employees of the public sector, liquidation of traditional privileges of the body of public servants and dissemination of market methods in determining terms and conditions of employment (such as, for instance, collective bargaining). And yet, as the empirical research shows, despite reforms of the public sphere inspired, to a certain extent, also by the NPM doctrine, hardly can any deep changes in the law of public servants and traditional models of employment in administration be talked of. The number of persons employed under the professional career model keeps prevailing and it is hard to limit social privileges of public servants. Actually, an opposite process can be noticed, consisting in the arrangements typical of the status of public servants being applied beyond the sphere of administration (e.g. to teachers of healthcare personnel)[[31]](#footnote-31). It is difficult to marvel at the fact, though – transferring solutions of strictly market nature onto the field of the law of public servants, besides certain good sides, also has drawbacks. The most significant of those seems to be their being contrary to the ethos of service to the state, based on loyalty and devotion of public servants to state affairs.

In Europe, to the relatively highest extent the ideas of NMP have been put into practice in the United Kingdom, the Netherlands and Sweden[[32]](#footnote-32).

1. **Conclusions**

It follows from the above that matters of employment in the public sphere depend, first of all, on local conditions. Each country enjoys considerable freedom in shaping its administrative structures and the rules of employment of the employees and officers supposed to carry out tasks of the state. However, this does not mean that definition of certain general models of the law of public servants is not feasible. The most important in that respect is their division according to the nature of employment of civil servants. In countries that have not undergone dramatic political transformation, the concept of the law of public servants as part of public law is commonly accepted – consequently, public servants are regarded as public officers, their employment having the nature of a service. Such a model of public servants law is generally encountered in countries of the Western Europe. Where the political system of a “real socialism” existed, the situation is more complicated, an example being Poland where, due to a number of factors, mostly ideological ones, the law of public servants has been absorbed by labour law. Abandoning the concept of exclusive nature of employment of public servants, the socialist state equated their status with that of employees, thus eliminating distinctness of the law of public servants within the legal system. Since the 1970s it is part of labour law, public servants being, from the formal point of view, employees with whom employment relationships are concluded, mostly using the tool of the contract of employment. It is worthwhile to observe that no decision to restore earlier solutions was made after the political changes of the year 1989.

The law of public servants being part of labour law also exerts influence on the shape of many legal solutions that concern doing work for the public sector. By way of example, limitation of the personal scope of the law of public servants solely to persons professionally doing the state’s tasks in public offices can be mentioned. In the systems where classical modes of the law of public servants exist, covered by it are persons employed also in other state entities (e.g. at schools or the state’s (business) agencies).

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# 30

1. As far as persons employed at ancillary (service) positions are concerned, they usually do not enjoy any special legal status. Regular contracts of employment are concluded with them, making the persons employees within the meaning of labour law regulations. General labour law provisions apply to the staff, although in some cases the latter is also subject to specific regulations (regarding e.g. remuneration for work). [↑](#footnote-ref-1)
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13. The arrangements included, e.g. the contract of mandate (*mandatum*), contract for use (*precarium*) or for hire of work (*locatio conductio operarum*), taken as a natural point of reference for the doctrinal conjecture on the legal nature of the relationships between the ruler and his or her officials. Attempts were further made to explain the essence of the relationship by referring to special arrangements (still being, however, parts of the private law), like those of an innominate contract or privilege (the concepts of *contractus innominatus* and *privilegium*). For a broader discussion see: *W. Jaśkiewicz*, Studia nad sytuacją prawną pracownikówpaństwowych, t. 1, Poznań 1961, pp. 22–26. [↑](#footnote-ref-13)
14. Examples are e.g. the theory of agreement on public service; the service relationship viewed as a constitutional legal relationship; the theory of two agreements – a commitment to undertake service and an order to provide service activity, as placed by the state; the theory of a constitutional law relationship based on a unilateral act; the theory of a public law agreement, the theory of a public law relationship based on a public law agreement (*W. Jaśkiewicz*,Studia nad sytuacją, t. 1, pp. 29-54; *E.Ochendowski*, Koncepcja szczególnych stosunków władczych i jej rola [in:] Studia z dziedziny prawa administracyjnego. Prace ofiarowane z okazji 80 rocznicy urodzin Profesora Maurycego Jaroszyńskiego, *L.Bar* (ed.), Ossolineum 1971, p.29. [↑](#footnote-ref-14)
15. J. Stelina: *Prawo urzędnicze*, Warszawa 2017, p. 4 *et seq.* [↑](#footnote-ref-15)
16. Cf. *F. Wagner*, Beamtenrecht, Heidelberg 2002, p. 1. [↑](#footnote-ref-16)
17. *A. de Laubadere*, *J.-C. Venezia*, *Y. Gaudemet*, Droit Administratif, L.G.D.J. 2001, pp. 25–26; *R. Chapus*, Droit administratif gènèral, vol. 2, Montchrestien 2001, p. 124 *et seq.*, F. Melleray, *Droit de la fonction publique*, Paris 2013, p. 125. [↑](#footnote-ref-17)
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19. Cf. *Služebnoye pravo (Gosudarstvennaya graždanskaya služba)*, *I. N. Barcic* (ed.), Moscow – Rostov-on-Don, 2007, p. 19. [↑](#footnote-ref-19)
20. Cf. *J. Szreniawski*, Wstęp do nauki administracji, Lublin 2000, p. 63. [↑](#footnote-ref-20)
21. Cf. *W. Dawidowicz*, Zarys ustroju organów administracji terytorialnej w Polsce, Warszawa 1978, p. 139. [↑](#footnote-ref-21)
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23. In fact, it was just in France that the foundations of the model were laid due to the administrative reforms launched by Napoleon Bonaparte, for which reason the model is often dubbed “Napoleonian” (Cf. *A. Stevens*, *H. Stevens*, Brussels Bureaucrats?, Palgrave 2001, p. 32 *et seq.*). Characteristic of the Napoleonian model was the establishment of a strong bond of loyalty between the administrative structures and the empire (state), achieved both by social benefits for the official and their families and a system of guaranteed career (an elaborate system of positions, prospects for professional development and promotion). [↑](#footnote-ref-23)
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