Dominika Cendrowicz
Institute of Administrative Studies
Faculty of Law, Administration and Economics
University of Wrocław
dominika.cendrowicz@uwr.edu.pl

On the need for comparative study of public administration and administrative law

O potrzebie badań porównawczych nad administracją publiczną i prawem administracyjnym

Summary

The aim of this paper is to present the objectives of comparative method in the study of public administration and administrative law.

Keywords

comparative method, comparative public administration, comparative administrative law, cultural factors

Streszczenie

Artykuł przedstawia cele metody porównawczej w administracji publicznej i w prawie administracyjnym.

Słowa kluczowe

metoda porównawcza, porównawcza administracja publiczna, porównawcze prawo administracyjne, czynniki kulturowe

"Without comparisons to make, the mind does not know how to proceed."

A. De Tocqueville

Introduction

Public administration and administrative law are very closely connected with each other and indispensable in every state. Modern societies cannot function without public

administration and administrative law, and there are no substitutes for them. In the present era of europeanization and globalization, the importance of these two phenomena is even greater.

Public administration is an activity which is "overtaken by the state and realized by its pending bodies and also by the bodies of local self-government fulfilling collective and individual needs of citizens, resulting from the people's coexistence in communities." [Boć, 2010, p. 15] A. Lincoln once said that "The legitimate object of (...) [public administration – D.C.] [is] to do for a community of people, whatever they need to have done, but cannot do, at all, or cannot, so well do, for themselves – in their separate, and individual capacities." [Lincoln, 2008, p. 221] Among the key features of public administration are the facts that it always acts as a profitless entity aiming at performing public tasks, and that it is characterized by its purposive actions and initiative [Duniewska, 2005]. In the present period of principal social changes and new demands, public administration must react to them quickly and should be oriented towards securing public interest and public needs. The remark made, however, does not apply only to national administrations. Today, public administration functions at various levels: national, European, international and global[1].

Administrative law, on the other hand, is understood as "the most extensive and flexible body of law controlling the legal situation of both individuals and almost all other subjects operating within the state." [Duniewska, 2005, p. 93] Administrative law "exists at the interface between the state and society – between civil servants and state institutions, on the one hand, and citizens, business firms, organized groups, and noncitizens, on the other. (...) [Its - D.C.] essential role is to frame the way individuals and organizations test and challenge the legitimacy of the modern state outside of the electoral process. There are two broad tasks [of administrative law – D.C.] – protecting individuals against an overreaching state and providing external checks that enhance the democratic accountability and competence of the administration" [Rose-Ackerman, Lindseth, Emerson, 2017, p. 1]. The very important fact is that administrative law is linked with public administration in a way that the former regulates the latter's structures, tasks and procedures.

1. General Remarks on Comparative Public Administration and Comparative Administrative Law

Today's era of developed contacts between states and people from different countries and continents, as well as the particular intensification of the interdependence of development of particular parts of the world, leads to an increase in interest in comparative

research in the field of public administration and administrative law. It is noteworthy that the increased interest in applying comparative research on public administration and administrative law is not the result of "idle curiosity" of researchers. In public administration and in the field of administrative law, comparative research is justified by social necessities, without the existence of which they would soon die out [Starościak, 1973].

The beginnings of applying the comparative method in public administration and administrative law have a certain tradition. When it comes to comparative research in the field of public administration, they have a shorter tradition than comparative studies in the field of administrative law. Their development in the world is connected, among others, with the work of the Comparative Administration Group established in the United States in 1960. However, despite the incomparably shorter tradition, the importance of comparative public administration is today as important as comparative administrative law. In Western Europe and the United States, comparative public administration is considered part of the administration theory. According to the Comparative Administrative Group it is defined as "the theory of public administration applied to the diverse cultures and national settings and the body of factual data by which it can be examined and tested." [Otenyo, Lind, 2006, pp. 1–7] And its main goal, as L. Cadwell claims, "is to hasten the emergence of knowledge concerning administrative behaviour – in brief, to contribute to a genuine and generic discipline of public administration." [Cadwell, 1982, p. 230]

Comparative public administration is a cross-cultural approach to the study of public administration [Henry, 1985] which focuses on cultural diversities and Weberian bureaucracy. The comparative public administration also takes up issues of administration activities undertaken in various environments, and focuses on the creation and implementation of public policies in the areas of public authorities' activities, on the structures of public administration, as well as on its organizational culture. It values empirical research that takes advantage of rigorous methods such as field observation and experiments as well as organizations, for instance, groups. What is more, it emphasizes the multi-organizational nature of public administration and the significant character of interaction between governmental organizations at different levels [Fatile, Adejuwon, 2010].

It needs to be noticed that comparison within the public administration can be made both from the point of view of administrative law and the science of administration. If it is made from the perspective of the science of administration, it covers a wider spectrum of problems than comparative research conducted under administrative law. The difference in the area of research on public administration depending on the adopted perspective, i.e. administrative law or the science of administration, results from the fact that "The subject of the administrative law is the world of norms and their interpretation,

and the science of administration deals with real administration, the world of social facts and related assessments." [Kulesza, Sześciło, 2013, p. 15] Therefore, the sphere of comparative research conducted from the point of view of the science of administration refers primarily to the internal environment of administration, to the goals of its operation, to the search for the best solutions in its organization and functioning as well as the decision-making process. From the point of view of the administrative law this sphere is primarily relations of administration with the external environment manifested in the legal basis of its operation, social expectations towards the administration and its legal forms of action [Szreniawski, 2002].

Interestingly, comparative public administration often involves making comparisons between public and private administration. It is worth noting in this context that the perception of public administration as close to business and, subsequently, its comparison with private sector organizations began with the rise in the importance of the New Public Management concept in the 1980s[2], according to which public administration, like private one, should be oriented on achieving the highest possible results. To achieve this, the representatives of this concept considered it necessary for the public administration to use the mechanisms of market competition. In addition, it should be deregulated and many of its tasks should be privatized. The centralized, bureaucratic solutions characteristic for public administration in the field of staff recruitment and management, financial management, purchasing and resource allocation are inappropriate according to proponents of the New Public Management concept. Therefore, public administration should be designed on the pattern of the private model.

In comparative studies on public and private administration, attention is also drawn to the differences between them. The most frequently mentioned are the purpose of the activity, which in relation to public administration is free satisfaction of the collective needs of citizens resulting from the co-existence of people in communities and permanence of activity, and in the case of private administration, focus on profit and impermanence of activity. Both the existing differences and similarities between the two administrations mean that the research conducted on them in the comparative context leads to conclusions which vast majority is of practical value. Among the proponents of the trend of conducting comparisons concerning both administrations, there are also those who pay attention to the risks for citizens – recipients of public administration activities and warn against excessive admiration in the search for similarities, and thus shaping public administration in imitation of the private one [Błaś, 2013].

As for comparative administrative law, it is the study of other administrative law systems in order to understand one's own system better. Comparative research in the field of administrative law has a long tradition on the European continent, dating back to the

nineteenth century, and comparative administrative law is a well-established scientific discipline. Comparing within the administrative law as a research method, depending on the historical period, served various purposes and performed various functions. Initially, it was thought that the examination of administrative law systems of other countries is aimed at better understanding of one's own system, as well as finding models to improve it. This approach to comparative research has been taking place on the European continent for over 150 years [Van Hoecke, 2015; Reimann, Zimmermann, 2006]. For example, a French lawyer, R. Saleilles (1855-1912), who was a professor of law at the University of Paris from 1895, a long-time lecturer in criminal comparative law, and an initiator of the creation of a comparative course in civil law at the Faculty of Law of the University of Paris in 1901, paid attention to a better understanding of one's own legal system as a function of the comparative method [Saleilles, 1911].

Over time, the functions of comparative law have evolved, and it has itself covered more and more new areas, while not appropriating the subject matter of comparative public administration, to become the tool for the proper harmonization of law within the European Union at the end of the twentieth century [Van Hoecke, 2015]. The current demands of comparative studies in the field of administrative law are more realistic, simpler and, one could say, more egoistic. These are the needs resulting from the intensification of international trade. Participation in this trade requires a good knowledge of the rights of the trading partners. For example – you cannot set up or run a business in another country, buy real estate in another country, or travel in accordance with the law using public roads without knowing the rules regulating related issues, which are simply a part of administrative law [Starościak, 1973].

2. The Necessity of Comparison within Public Administration and Administrative Law Systems

According to P.G. Peters "All scholars have a tendency to conceptualize politics, economics or other social phenomena [like public administration and administrative law – D.C.] in terms of our own national or even personal experiences. (...) However, it is crucial for the development of meaningful theoretical perspectives in those social sciences to examine each national experience in light of that of other nations. This allows us to understand the effects which differences in structures, cultures, and values have on each other, and on the performance of the particular aspect of the social system that is being investigated. In that regard, the tendency of academic disciplines to isolate comparative studies from other subfields represents a barrier to theoretical development and enrichment within those disciplines." [Peters, 1990]

Both in the field of public administration and administrative law, comparative research has many advantages:

Firstly, because "Public administration has a massive impact on the life of today's societies and individuals, it is also often the subject of interest and judgment in commonplace opinion, the press, etc. Administrative law, like no other legal branch today, enters into everyday life – and (...) is quite well known in society and generally obeyed by the average person without much resistance." [Longchamps, 2001, pp. 3–4]

Secondly, because comparing is the basis of all knowledge [della Porta, 2002]. It enables a comprehensive and in-depth look and a more thorough assessment of public administration and administrative law of another country [Rybicki, 1973]. It allows one to understand the legal and social conditions in which other societies function [Glenn, 2006]. The motive of comparative research associated with the extension of one's own worldview probably does not require much justification. There is no better way to overcome stereotypes and build bridges between societies from different countries as well as learn about them. The most common cause of conflicts, stereotypes and prejudices is the lack of knowledge about others.

Thirdly, the use of the comparative method can serve as an aid in improving the national public administration and administrative law. The nineteenth-century comparatists already saw this advantage of the comparative method.

Fourthly, comparison as a component of the comparative method is a particularly important cognitive activity in every research work [Pieter, 1967], mainly due to the internationalization of scientific life, development of international relations and the joining of states within international organizations. These phenomena inevitably necessitate comparing the legal systems of individual countries and drawing conclusions of high cognitive and practical significance from the point of view of their own legal solutions [Rybicki, 1973].

Fifthly, comparative studies provide material for the formulation of generalizing assertions, or at least historical generalizations [Longchamps, 1970]. However, this is possible only when the application of this method is guided by the vision of creating a general theory of solving a certain legal problem [Zweigert, 1972].

3. The Difficulties in the Study of Comparative Public Administration and Comparative Administrative Law

To consider a study as a comparative study, whether in the field of administration or law, it must contain the so-called "intellectual input" [de Cruz, 2007]. Comparative research in public administration and administrative law should be something more than

just comparing and confronting information on various administrations and legal systems. It should provide insight into the nature of the problems faced by various administrative law systems and the public administrations functioning in them, as well as the ways in which they operate and develop. For this reason, an important task for the person conducting comparative research is to make a satisfactory review of the state of the art and the legal system of the country which is to be the area of comparison. However, a problem arises before the researcher in this task: in each system there are first and second degree problems. Therefore, the task of the researcher is to determine which of them are important, i.e. those without which the study will be incomplete and not entirely cognitively valuable, and which are less important and can be omitted. Proper implementation of this task affects the success or failure in the application of the comparative method by a given person. In addition, in the comparison process, it is important to limit oneself to specific systems that form the basis of comparisons. If the research is to be in-depth, too many legal systems cannot be selected for comparison, because when comparing each with the other, it may turn out that there are so many compared options that there is not enough room to draw conclusions from research [Pozzo, 2012].

Conclusion

The presented considerations show that the comparative public administration and comparative administrative law contribute to the improvement of their own legal and organizational systems. In addition, they also have the advantage of allowing one to understand the mechanisms of functioning of other legal systems. Therefore, research conducted within the framework of the comparative public administration and comparative administrative law allows one, despite the hardships hidden in them, to broaden horizons of thought. This is the research typical of the era of peaceful coexistence of the world: it constitutes a platform for discussion and mutual knowledge, without the possibility of imposing one's view on others. It helps to create a universally understandable language of law [Starościak, 1973]. So it is of great value if we only avoid the pitfalls that could be found within its framework.

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Notes

[1] The European Union administration is a great example of this phenomenon.

[2] A new managerial approach to public administration first appeared in Great Britain, Australia and New Zealand in the 1980s, and from the early nineties it first gained its place in the United States.