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Paulina Bieś-Srokosz
Jan Długosz University in Częstochowa, Poland
ORCID: 0000-0002-7353-3460
p.bies@ujd.edu.pl

Contemporary Challenges for Polish Administrative Law Regarding Legal Forms of Public Administration's Activities: Reflections on the Direction of Change in Developing New Legal Forms of Activity

Współczesne wyzwania polskiej nauki prawa administracyjnego wobec prawnych form działania administracji publicznej. Kilka uwag na temat kierunku zmian w tworzeniu nowych prawnych form działania

ABSTRACT

The article presents scientific research with a national scope on the Polish science of administrative law, specifically examining the current hybrid legal forms of activity. The administrative authority manifests itself through the legal forms used by public administration in performing public tasks. Although there is an increasing trend towards using non-authoritative (hybrid) legal forms, questions arise about their precise legal nature and how best to classify them within existing legal form groups. Redefining legal forms of public administration activity and updating the catalogue with newly created forms thus becomes a contemporary challenge for the science of administrative law. The article examines issues concerning hybrid legal forms of public administration and their direction of change and includes reflections on a perceived disorder not only conceptually but also in terms of classification within the legal forms of public administration, especially regarding new forms that raise questions about their legal nature within the doctrine. The question is also asked about the contemporary challenge for the science of administrative law concerning legal forms of public administration. As a result of the conducted research, a thesis was formulated that Polish science of

CORRESPONDENCE ADDRESS: Paulina Bieś-Srokosz, PhD, Assistant Professor, Jan Długosz University in Częstochowa, Faculty of Law and Economics, Zbierskiego 2/4, 42-200 Częstochowa, Poland.

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administrative law faces the task of conducting a comprehensive analysis of all legal forms of public administration in legal circulation and making an appropriate classification. These efforts should serve to redefine the concept of legal forms of activity in public administration and to update their catalogue with new (non-authoritative/hybrid) legal forms.

Keywords: Polish science of administrative law; legal forms of activity; non-authoritative legal forms of activity; hybrid

INTRODUCTION

The activities of public administration in Poland over the past two decades have shifted towards legal institutions of a non-authoritative nature. The present author fully supports the position of T. Górzyńska, who holds that the domain of administrative *imperium* – activities of an authoritative nature – is shrinking in favour of institutions with a mediatory, consensual, conciliatory and contractual character.[1] Often, these legal institutions display characteristics of both public and private law, creating hybrid forms that are challenging to classify correctly within the legal forms of public administration.

Today, in the Polish science of administrative law, there exists a kind of disorder, both in terms of concepts and classification, regarding legal forms of public administration activities, especially with newly created forms for which doctrinal representatives express doubts about their legal character. Can this situation even be resolved? And what, then, becomes the contemporary challenge for administrative law concerning the legal forms of activity of public administration?

According to the author, the Polish science of administrative law faces challenges in defining the legal nature of specific legal forms that have been operating within legal transactions for some time, and in ensuring their correct classification within the appropriate legal branch. Why is this so important? Considering both the science of administrative law and the practical application of the law, the legal forms of public administration activities should constitute a strictly defined catalogue to which specific legal forms are assigned. Since public administration operates within the law's constraints – primarily public law – and exercises administrative authority, which is an inherent feature of administrative law, the legal forms employed by public administration should, by definition, be of a sovereign nature (or at least non-authoritative/bilateral) and be regulated by provisions of public law.

[1] T. Górzyńska, *Poszukiwanie konsensusu w miejsce jednostronności, czyli administracja inaczej*, [in:] *Prawo do dobrej administracji. Materiały ze Zjazdu Katedr Prawa i Postępowania Administracyjnego, Warszawa-Dębe, 23–25 września 2002 r.*, eds. Z. Niewiadomski, Z. Cieślak, Warszawa 2003, p. 371.

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RESEARCH AND RESULTS

1. Legal forms of public administration activities: doctrine vs. reality

Although the concept of legal forms of activity in public administration has been defined, it is not unambiguously and universally accepted in the scientific community.[2] Nevertheless, transformations within public administration, especially concerning new public tasks, contribute to a situation where the traditionally accepted classification of legal forms in the academic sphere is becoming inadequate. This is partly due to the visible influence of civil law on public administration, especially regarding legal forms of activity. The traditional division of legal forms into public law (authoritative and non-authoritative) and private law remains applicable. However, it is increasingly difficult to assign a specific legal form to a particular classification. This difficulty stems from the erosion of clear boundaries during the legislative process between legal forms characteristic of public law and those of private law. More frequently, legislators now establish civil law contracts as the primary means of performing public tasks, as evidenced in public procurement, public-private partnerships, and the delegation of tasks to administrative entities. Additionally, legislators create legal forms that exhibit features typical of both administrative and civil law, resulting in hybrid legal forms within public administration. Examples include administrative settlements, intended by legislators as analogous to settlements under the Civil Code.[3] In its legislative activities in administrative law, the legislator also employs the so-called "overlays" that in certain respects limit the statutory principle of freedom of contract.

Hybrid legal forms of activities constitute a distinct category of legal forms, distinguished by their incorporation of features characteristic of both public and private law. This mixed legal nature has led to debates in administrative law doctrine regarding the appropriate classification of certain legal forms. While public administration typically operates through the establishment of legal relations based on legal acts, legal provisions now increasingly allow supplementary forms, con-

[2] The term "forms of public administration activity" was created by the science of administrative law. It can be considered a form of activity as a type of specific activity of an administrative body. Legal regulations define the legal form of administration activity as a type of specific activity that can be used by an administrative body to handle a specific matter (see J. Starościak, *Prawne formy działania administracji*, Warszawa 1957, p. 14). This is the equivalent of the concept of legal activity in civil law (see E. Ura, *Prawo administracyjne*, Warszawa 2021, p. 145). In the doctrine of administrative law, the concepts of legal forms of public administration activity are also defined as "a separate or separable, legally defined, with fixed features type of conventional or actual activity, or a set of such activities of a specific entity (or group of entities) established to perform tasks within the scope of public administration in order to fulfil tasks within the scope of public administration" (K.M. Ziemski, *Indywidualny akt administracyjny jako forma prawna działania administracji*, Poznań 2005, p. 138).

[3] Act of 23 April 1964 – Civil Code (consolidated text, Journal of Laws 2020, items 1740, 2320).

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tributing to the diversity and complexity of legal forms in public administration. Given this multiplicity, it is often impossible to determine "at first glance" the type of legal form in question. Therefore, it is crucial to analyse these forms according to the affiliation of the parties to public administration structures and the legal nature of the form's subject matter. There are many examples illustrating hybrid legal forms of activity, but this article is not intended to provide a specific analysis of each. Rather, it seeks to explore the concept of hybridity and the mutual influences between branches of law, one of which is administrative law. While this concept serves as the guiding principle of this article, it is worthwhile to highlight some particularly characteristic forms in administrative law that should be classified as hybrid. Examples include the administrative contract, the administrative agreement and the social contract.[4] These forms, being bilateral and non-authoritative, provide a degree of flexibility and optimisation in actions undertaken by public administration. Such a contractual approach helps achieve efficiency across various entities and public administration bodies.

So why has public administration increasingly moved towards non-authoritative or hybrid forms of activity? The present author believes that this trend stems from the understanding that administrative law, in the strict sense, is a system of legal rules through which the state establishes conditions for the comprehensive development of society.[5] "Every law, irrespective of its field, is enacted to produce effects that influence social and economic life, its different segments and combinations".[6] Clearly, the primary objectives of public administration remain unchanged; it continues to prioritise meeting societal needs and ensuring citizens' safety by managing social processes.[7] However, one can observe a shift in the traditionally authoritative sphere of public administration activities. According to M. Krawczyk, the authoritative

[4] P. Bieś-Srokosz, P. Niemczuk, *Hybrydowe prawne formy działania w administracji publicznej*, "Roczniki Nauk Prawnych" 2021, vol. 31(2); D. Kijowski, *Umowy w administracji publicznej*, [in:] *Podmioty administracji publicznej i prawne formy ich działania. Studia i materiały z konferencji jubileuszowej Profesora Ochendowskiego*, Toruń 2005, p. 297; J. Wyporska-Frankiewicz, *Publicznoprawne formy działania administracji o charakterze dwustronnym*, Warszawa 2010, p. 268; P. Bieś-Srokosz, P. Błasiak, *Ugoda administracyjna w świetle nowelizacji Kodeksu postępowania administracyjnego. Refleksje na temat konsensualnej formy działania w administracji publicznej*, "Przegląd Prawa Publicznego" 2018, no. 6; J. Lemańska, *Umowa administracyjna a umowa cywilnoprawna*, [in:] *Instytucje współczesnego prawa administracyjnego*, eds. I. Skrzydło-Niżnik, P. Dobosz, D. Dąbek, M. Smaga, Kraków 2001, pp. 419–432; E. Stefańska, *Umowy zawierane w sferze administracji publicznej – wybrane zagadnienia*, [in:] *Umowy w administracji*, eds. J. Boć, L. Dziewięcka-Bokun, Wrocław 2008, p. 157 ff.

[5] A. Okolski, *Wykład prawa administracyjnego oraz prawa administracyjnego obowiązującego w Królestwie Polskim*, vol. 1, Warszawa 1880, p. 19.

[6] J. Zimmermann, *Prawo administracyjne*, Warszawa 2014, p. 47.

[7] Z. Duniewska, *Prawo administracyjne – wprowadzenie*, [in:] *System Prawa Administracyjnego*, vol. 1: *Instytucje prawa administracyjnego*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2010, p. 102.

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form of public administration activities is constantly evolving, with orders and prohibitions directed at individual entities being replaced by other activity tools. These tools include, notably, an expanded role for regulatory acts that shape and establish frameworks requiring cooperation from the concerned addressee.[8]

Despite appearances, hybrid legal forms of activity are becoming the most frequently regulated forms in Polish law.[9] Analysing the substantive elements of administrative law reveals that legislators favour hybrid forms over those traditionally characteristic of administrative law, such as administrative decisions. According to the science of administrative law, the legal forms of activity that should dominate in administrative law (as a branch of public law) are those characteristic of this field, particularly those of an authoritative nature. This is largely because the public administration body exercising administrative authority should resolve matters substantively by issuing administrative decisions. In any case, it is the legislator who determines the legal form for implementing public tasks by establishing specific provisions that form the basis for the activities of public administration bodies. These bodies are not permitted to act arbitrarily by choosing a legal form at will. Thus, the legislator decides each case. This approach has both supporters and opponents. However, the present author considers such legislative activity to be entirely legitimate, as independence in selecting the legal form of task implementation could lead to abuses of administrative authority. Furthermore, it could result in the same activity taking different forms across various regions of Poland.

Although the author is not an advocate of imposing strict limitations on task execution, legislative involvement in this context is fully justified. One additional significant point to consider is that freedom of activity is an inherent feature of private law. While there is a legal framework governing this freedom and setting basic conditions, under the principle of freedom of contract, it is ultimately the parties who determine both the content and execution of the contract. This principle, established in Article 353[1] of the Civil Code,[10] holds a prominent place in obligation law and recognises the autonomy of individuals in shaping their contractual responsibilities.[11] The present author also fully supports Z. Leoński's position, which

[8] M. Krawczyk, *Podstawy władztwa administracyjnego*, Warszawa 2016, p. 283.

[9] Cf. P. Bieś-Srokosz, *Tendencje zmian prawnych form realizacji zadań publicznych*, [in:] *Prawo administracyjne dziś i jutro*, eds. J. Jagielski, M. Wierzbowski, Warszawa 2018, pp. 190–196.

[10] Cf. P. Machnikowski, *Swoboda umów według art. 353[1] k.c. Konstrukcja prawna*, Warszawa 2005; M. Sośniak, *Zasada swobody umów w prawie obligacyjnym z perspektywy schyłku XX wieku*, "Studia Iuridica Silesiana" 1985, vol. 10, p. 7 ff.; M. Safjan, *Zasada swobody umów*, "Państwo i Prawo" 1993, no. 4.

[11] According to W. Czachórski, the principle of freedom of contract has several meanings. First, the contracting parties have full freedom as to whether they want to establish an obligation relationship between each other and therefore it depends on them whether a contractual obligation will be established. Second, there is complete freedom to choose a contracting party. Third, the contracting parties are free to shape the content of the contract at their own discretion, and thus bring to life

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asserts that specifying the legal form for a public administration body's activity, and even mandating particular forms, aligns with the rule of law in public administration.[12] Accordingly, in reference to the principle governing the operation of public administration bodies – and thus the functioning of the entire public administration – as expressed in Article 7 of the Polish Constitution,[13] public authority operates based on and within the boundaries of the law. Therefore, there should be no notion of independence in choosing or determining the legal form for the execution of a task by a public administration body or entity.

2. The impact of civil law on legal forms of public administration activities

There is an increasing willingness among administrative law representatives and legislators to adopt models from established legal institutions in other branches of law. The significant influence of civil law on administrative law is particularly evident in the issue under discussion. Many legal forms in administrative law bear characteristics reminiscent of civil law forms, which, in the present author's view, should not be the case. Certainly, it is possible to examine the function of a given form or evaluate its suitability for public administration. However, directly imitating or copying elements from civil law will not yield the desired effect and may add confusion, both in terminology and in the proper application of such forms. A clear distinction must be maintained between public and private law and, consequently, between the legal forms unique to each.

Moreover, there is a trend to model legal institutions on those already established in European, EU or Polish legal systems. In doing so, legislators should prioritise rationality to avoid creating entirely new legal forms that might later be challenging to classify or assign to a specific branch of law.

The present author believes that legal forms should be adapted to current public tasks, regulated clearly and transparently, and retain the characteristics intrinsic to public (administrative) law. Re-examining existing legal forms within public administration is essential to ensure they are properly classified.

Contemporary legal forms of administrative activity in Poland are undergoing a continuous process of evolution. Additionally, new legal instruments are emerging

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the legal relationship that suits their interests. Fourth, the concept of "freedom of contract" implies a far-reaching liberation of the parties from legal formalism. In contractual relations, there is a rule that a mere agreement between parties is legally effective without a special form. See W. Czachórski, [in:] *Zobowiązania. Zarys wykładu*, eds. A. Brzozowski, M. Safjan, E. Skowrońska-Bocian, W. Czachórski, Warszawa 2004, p. 109.

[12] Z. Leoński, *Zarys prawa administracyjnego*, Warszawa 2006, p. 253.

[13] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution is available at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 2.11.2024).

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that do not align with the conceptual framework traditionally established within the science of administrative law.[14] Hybrid legal forms of activity serve as an example[15] of non-authoritative forms with a complex legal character due to their blend of public and private legal features. Public administration is continually evolving and, consequently, requires new legal forms of activity that align with its current needs. However, this need does not call for artificially creating new legal instruments but rather for reorganising existing ones to fit the transforming landscape of public administration and its increasing interaction with non-public entities.[16]

The prevailing view in academic research is that the use of legal instruments and tools with private law characteristics by public administration only makes it subject to both administrative law (for competence) and civil law (for measures and forms of activity).[17] However, the present author disagrees with this position, suggesting a broader approach. When a public administration body enters into an agreement delegating a public task to a non-public entity, this fundamentally changes the task's nature and the citizen's legal status. The task ceases to be a public function and instead becomes a public service, altering the citizen's status from a public law subject to a beneficiary under private law. Consequently, the citizen loses the ability to claim the performance of a public task by the state, and this shifts to a right to compensation for any damage arising from failure to perform the service.[18]

The trend towards adopting civil law contracts as forms of activity within public administration increasingly stems from legislative practices, which reflect evolving dynamics in public administration and societal needs. The legislative activity of the legislator has led to the emergence of contracts within public administration that do not fit entirely within the classical framework of civil law, raising questions about whether such legislative intervention might undermine the principles of civil law. As a rule, the primary form for public task realisation should be grounded in public law, such as administrative decisions or technical and material activities. However, research indicates that private law forms, namely civil law contracts, now dominate public task realisation.[19] Therefore, it would be worthwhile to consider broader

[14] B. Dolnicki, R. Cybulska, *Nowe dwustronne formy działania administracji publicznej. Zagadnienia wybrane*, [in:] *Koncepcja systemu prawa administracyjnego. Zjazd Katedr Prawa Administracyjnego i Postępowania Administracyjnego, Zakopane 24–27 września 2006*, ed. J. Zimmermann, Warszawa 2007, p. 471.

[15] These may include an administrative settlement, an administrative agreement or a social contract.

[16] B. Dolnicki, R. Cybulska, *op. cit.*, p. 472.

[17] J. Łętowski, *Prawo administracyjne. Zagadnienia państwowe*, Warszawa 1990, p. 208.

[18] A. Błaś, *Niekonstytucyjne zjawiska w administracji publicznej*, [in:] *Instytucje współczesnego prawa administracyjnego. Księga jubileuszowa Profesora zw. dra hab. Józefa Filipka*, ed. I. Skrzydło-Niżnik, Kraków 2001, p. 51.

[19] P. Bieś-Srokosz, *Umowa cywilnoprawna jako podstawowa forma działania agencji rządowych w Polsce*, "Kwartalnik Prawa Publicznego" 2013, no. 3.

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protections for the public interest when public tasks are carried out in a private law form. Such an approach is essential, as the legal relationship between entities, the legal avenues for pursuing rights and the verification of completed tasks change substantially. However, this topic requires further in-depth analysis, which could be explored in a dedicated scientific article.

Moreover, the public administration's reliance on non-authoritative forms arises, as D. Ehlers[20] aptly notes, from pragmatic and practical considerations, giving these forms a technical character rather than signifying the use of private autonomy by administrative authorities. These authorities remain bound by public law provisions that modify or supplement private law according to their accountability requirements in public task performance.[21] As Z. Leoński observes, the scope of contractual freedom outlined in Article 353[1] of the Civil Code is considerably limited for administrative entities by public law norms, which form the basis of all their activities.[22]

The primary objective behind using non-authoritative (hybrid) forms in public administration lies in enhancing the quality and efficiency of public task performance while allowing a regulated level of choice in contracting parties. Public administration entities entering civil law contracts, which are subject to both civil and administrative law, must address validity and effectiveness. Equivalent regulation by both civil and administrative law introduces the challenge of prioritising one legal branch over the other. Thus, it seems reasonable to conclude that the validity of a civil contract as a form of administrative activity should be upheld only when it satisfies the requirements of both civil and administrative law.[23] Administrative law restrictions are designed to prevent losses, mitigate risks and reduce potential failures by public administration entities.

The trend toward adopting non-authoritative (hybrid) legal forms stems from public administration bodies engaging in contracts based on civil law, e.g., in the management of state-owned land or the sale of state-owned agricultural property. Several factors contribute to the expanding use of civil contracts within public administration, chief among them being decentralisation, shifts in economic and ownership structures and privatisation of public tasks.[24] These circumstances lead public administration to adopt forms specific to civil law to secure the freedom and flexibility needed to perform its assigned tasks effectively. This approach arises primarily because public administration carries out its authoritative activities within

[20] D. Ehlers, *Verwaltung in Privatrechtsform*, Berlin 1984, p. 267.

[21] Cf. K. Strzyczkowski, *Prywatyzacja (organizacyjna) przedsiębiorstw publicznych*, "Przegląd Ustawodawstwa Gospodarczego" 2003, no. 12.

[22] Z. Leoński, *Charakter prawny koncesji i umowy koncesyjnej w świetle przepisów ustawy o autostradach płatnych*, "Samorząd Terytorialny" 1998, no. 4, p. 40.

[23] Such a position has been upheld in the Supreme Court case law. See judgment of the Supreme Court of 26 November 2002, V CKN 1445/00, OSNC 2004, no. 3, item 47.

[24] Cf. J. Zimmermann, *Polska jurysdykcja administracyjna*, Warszawa 1996, p. 12.

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the framework of the so-called *imperium*[25] and engages in non-authoritative activities within the framework of *dominium*.[26] In the *imperium*, public administration activities are regulated by administrative law and often include forms such as administrative decisions or enforcement actions. Here, public administration bodies generally maintain a superior position relative to citizens.[27] Conversely, within the *dominium* framework, public administration acts as an equal participant in civil law transactions. This approach entails that specific public administration entities – such as local self-governments, the State Treasury and state agencies – are granted legal personality. This status also provides them with certain assets, legal capacity and the ability to acquire rights and incur obligations. Thus, one can conclude that in civil law transactions, public administration operates using the same legal forms as other civil law entities, primarily through civil contracts.

The use of civil contracts in public administration – with specific terms, structuring of contract content, form requirements, writtenness rules and contractual penalties constituting *lex specialis* in relation to standard civil law provisions – is not a contradiction of civil law but, rather, an overinterpretation, as representatives of civil law doctrine suggest.[28] P. Stec, whose view the present author fully supports, argues that the so-called "uncivil" nature of contracts lacking a "pure" code form[29] is not validated by the distinct legal protections provided in public (administrative) law acts. Such a judicial procedure should be viewed as an out-of-court civil procedure. Proceedings before provincial administrative courts should thus be classified as formally administrative cases that address substantive legal issues as civil cases.[30] In the present author's view, the position within administrative law doctrine – that a contract involving public authority, with content or conditions regulated by special law, constitutes a new type of contract – is misguided. Indeed, the contract would not assume a public law nature; it remains a civil law contract under civil law, albeit modified by the so-called overlay.[31]

[25] Cf. A Doliwa, *Dychotomiczny charakter podmiotowości prawnej państwa (imperium i dominium)*, "Studia Prawnicze" 2002, no. 3, p. 35 ff.

[26] *Ibidem*, p. 40 ff.

[27] Cf. P. Stec, *Prawo cywilne jako przedmiot działań administracji publicznej*, [in:] *Podstawy prawa cywilnego z umowami w administracji*, eds. P. Stec, M. Załucki, Warszawa 2011, p. 41.

[28] Idem, *Umowy w administracji*, Warszawa 2013, p. 149.

[29] Article 66 ff. in conjunction with Article 353[1] of the Civil Code.

[30] P. Stec, *Umowy…*, p. 149.

[31] Additional conditions/requirements to be met by the contracting party. These are regulated by the provisions of a special law.

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CONCLUSIONS

Public administration – understood as a set of activities undertaken by various public and private entities – aims to implement public tasks defined in normative acts, primarily of a statutory nature. In fulfilling these tasks, it relies on civil law institutions for two primary objectives. The first objective concerns securing necessary resources and goods to maintain the administrative apparatus and enable material services to society. The second objective relates to the responsibility of providing citizens with various benefits and services that hold fundamental social importance.[32] While acting in an authoritative manner to unilaterally determine an individual's legal situation remains a core characteristic of public administration, there is an increasing tendency to establish a more balanced relationship between administration and individuals.[33] As a result, the issue of non-authoritative (hybrid) forms of activity in public administration is a topic of extensive academic research[34] and is simultaneously emerging as a contemporary challenge for administrative law.

Employing non-authoritative (hybrid) legal forms enables public administration to maintain flexibility and optimise its activities, allowing it to address non-contentious and complex issues with efficiency.[35] The contractual approach to executing public administration tasks has therefore become a preferred method for enhancing efficiency across various entities. The reasons behind the widespread adoption of the contractual approach in public administration can be explained both "by recognising a shift in the traditional paradigm and by acknowledging that such a shift may not be necessary".[36] If the authority of public administration does not inherently guarantee effective implementation of public tasks, nor does it motivate citizens to act in a certain way, then it follows that the use of non-authoritative forms does not, by itself, result in a loss of authoritative powers by the public administration.[37] Another significant factor promoting the contractual approach is the influence of

[32] Cf. A. Czarkowska, *Umowy adhezyjne w administracji publicznej*, [in:] *Umowy w administracji…*, p. 43.

[33] Cf. B. Jaworska-Dębska, *Umowy we współczesnej administracji*, [in:] *Umowy w administracji…*, p. 14.

[34] Cf. J. Starościak, *Studia z teorii prawa administracyjnego*, Wrocław–Warszawa–Kraków 1967, p. 72; S. Biernat, *Działania wspólne administracji państwowej*, Wrocław 1979, p. 95 ff.; J. Łętowski, *op. cit.*, p. 193 ff.; J.S. Langrod, *Instytucje prawa administracyjnego. Zarys części ogólnej*, Kraków 2003, p. 313; Z. Cieślak, *Porozumienia administracyjne*, Warszawa 1985.

[35] E. Stefańska, *op. cit.*, p. 157 ff.

[36] M. Stefaniuk, *Determinanty podejścia kontraktowego w działaniach polskiej administracji publicznej*, [in:] *Umowy w administracji…*, p. 143.

[37] K. Sobczak, *Metody badawcze w nauce prawa administracyjnego*, [in:] *Problemy metodologiczne nauki prawa administracyjnego (Przedmiot, metody badawcze i kooperacja interdyscyplinarna)*, ed. K. Sobczak, Katowice 1976, p. 29.

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administrative theory and practice across European countries, as well as the activities of EU bodies that endorse this method.[38]

The fundamental role of public administration is to safeguard benefits and act to maximise them.[39] To fulfil this goal, public administration is equipped with a range of normative administrative tools that define its authority.[40] Consequently, it uses available legal forms of activity – particularly non-authoritative (hybrid) forms – more frequently in its operations. In the present author's view, the use of non-authoritative forms of activity serves as a kind of veil, allowing public administration to avoid exerting its authority directly. A prime example of this is the administrative settlement, which, as a bilateral and hybrid legal form, aims to deformalize administrative proceedings and enable a mediated settlement. However, when analysing relevant regulations, such as the Administrative Procedure Code, it becomes clear that this settlement form only superficially resembles a cooperative activity by public administration toward the other party. The conclusion of such a contract is subject to numerous conditions, applying not to ongoing administrative proceedings between the authority and a party but only to agreements reached between parties appearing before the authority.

In light of these issues concerning non-authoritative (hybrid) legal forms, it is essential to underscore that newly created legal forms present significant challenges – not only for legislators and regulatory bodies but also for the science of administrative law. The lack of a unified interpretation regarding the legal nature and classification of these legal forms within the relevant branch of law contributes to uncertainty in applying the law and impacts the legal protection of citizens.

The Polish science of administrative law faces the task of conducting a comprehensive analysis of all legal forms of public administration in legal circulation and making an appropriate classification. These efforts should serve to redefine the concept of legal forms of activity in public administration and to update their catalogue with new (non-authoritative/hybrid) legal forms. This is a challenging endeavour, as it requires a deep understanding of the core essence of these newly developed legal forms and a clear insight into the legislative intent behind their regulation.

[38] Among the Polish academic researchers, the following have shown interest in this issue: M. Ofiarska, *Koncepcja umowy publicznoprawnej w niemieckiej nauce prawa administracyjnego*, [in:] *Jakość administracji publicznej*, ed. J. Łukasiewicz, Rzeszów 2004, p. 302 ff.; A. Jurkowska, *Rola arbitrażu w kontroli połączeń przedsiębiorstw w prawie Wspólnoty Europejskiej*, [in:] *Reforma wspólnotowego prawa konkurencji*, ed. E. Piontek, Kraków 2005, p. 272 ff.; A. Szpor, *Akt reglamentacyjny jako instrument działań administracji we Francji*, Warszawa 2003, p. 32 ff.

[39] J. Zimmermann, *Prawo…*, p. 30.

[40] M. Krawczyk, *op. cit*., p. 108.

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ABSTRAKT

W artykule przedstawiono badania naukowe o zasięgu ogólnopolskim dotyczące polskiej nauki prawa administracyjnego, a w szczególności zbadano aktualnie funkcjonujące hybrydowe prawne formy działania. Władztwo administracyjne przejawia się w formach prawnych, z których korzysta administracja publiczna, realizując zadania publiczne. Choć obecnie wzrasta tendencja do stosowania niewładczych (hybrydowych) prawnych form, pojawiają się pytania o ich charakter prawny oraz o ich właściwą klasyfikację do odpowiedniej grupy prawnych form. Dlatego też współczesnym wyzwaniem dla nauki prawa administracyjnego staje się redefinicja prawnych form działania administracji publicznej wraz z uaktualnieniem ich katalogu o nowo tworzone prawne formy. W artykule zbadano zagadnienia dotyczące hybrydowych prawnych form działania administracji publicznej i ich kierunek zmian oraz zamieszczono refleksje na temat pewnego rodzaju chaosu, nie tylko pod względem pojęciowym, lecz także klasyfikacyjnym, co do prawnych form działania administracji publicznej, a tym samym do nowo tworzonych form, wobec których przedstawiciele doktryny mają wątpliwości odnośnie do ich charakteru prawnego. Postawiono również pytanie, jakie jest współczesne wyzwanie dla nauki prawa administracyjnego w kwestii prawnych form działania administracji publicznej. W wyniku przeprowadzonych badań sformułowano tezę, że polska nauka prawa administracyjnego wymaga dokładnej analizy wszystkich występujących w obrocie prawnym form prawnych administracji publicznej oraz dokonania ich odpowiedniej klasyfikacji. Celem tych działań jest zredefiniowanie pojęcia prawnych form działania administracji publicznej oraz uaktualnienie ich katalogu o nowe (niewładcze/hybrydowe) prawne formy.

Słowa kluczowe: polska nauka prawa administracyjnego; prawne formy działania; niewładcze prawne formy działania; hybryda