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PUBLIC ADMINISTRATION INTEGRATION IN THE COUNTRIES OF THE EU – THEORY AND PRACTICE OF PRINCIPLES FOR ENHANCING THE PARTICIPATION

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Key words: public administration, European integration, DEMO-net, Czech Republic.

CONCLUSIONS

Public administration has been influencing society and individual citizens (or just „people”) since its beginning. In the theoretical or rhetorical as well as practical level, administrative activities were exercised in the way that can be described by principles in the most general (abstract) level. In relation to the values of democracy, the principles that may enhance the participation – it means the democratic character – of decision/policy making should be stressed. Although they may be explicit or implicit part of constitutional document, there practice is often very young and therefore it may be insufficient. The utilization of foreign top-down and bottom-up experience and – particularly with regards to the European integration – the cross-boarder cooperation and benchmarking in this field must be underlined. The paper outlined the theoretical and practical directions.

ABSTRACT

Public administration is one of the organizational instruments for achieving functions of a self-governmental unit within a state, a state or a supra-state unit. Theoretical as well as practical principles of its activities create the most general value framework and reflect the dynamics of public administration. Today, principles represent the phenomenon of legal approximation. Within the European region, European administration space is supposed to be an aim. The article will analyze the theory and the practice of the principles that have a potential to enhance participation within the decision/policy-making chain of public administration. The article that will also introduce the project DEMO-net relates to the actual trend of finding ways for improving

a) legitimacy of administration and public authority exercising;

b) democratic character of democracies; ... xy) quality in organization where the „public interest” is an most important part of rhetoric.

INTRODUCTION

Public administration represents a significant social phenomenon that has been an object of the researches probably since its beginning and that will be as an object of the researches probably always topical. It can be considered to be a one of institutional instruments for fulfilling state functions or functions of self-governmental units. In relation to the process of integration the international or supra-national or cross-boarder aspects of public administration have occurred. In practice of state or self-government (or supra-national) authority realization, stipulation of aims (desirable situations) and tasks (steps for achieving for aims) of public administra-

tion is entrusted in the first place to the legislative body (principle of *rule of law*). The achieving of aims (*effectiveness*) is often considered to be the basic purpose of public administration existence as well as the very important criterion for evaluation. For this achieving of aims, however, it is – according to the Czech theoreticians of administrative law and administrative science – necessary that the public administration (especially the self governmental part of it) itself should specify these aims and task (in the boundaries of law – *intra legem*). With regards to this sub-specification, the analogy of the administration and management (selecting of instruments for achieving the aims) is apparent. With regards to the term „democracy” and „democratic” the role of participation and democratization of public administration and public management should be stressed here. The first part of the paper analyses the relation of public administration and principles of its activities, particularly of those related to the called European Administrative Space. Subsequently, the importance of principles that enhance participation is underlined in relation to their theoretical as well as practical dimensions. The potential of modern information and communication technologies is evaluated and the related young project DEMO-net is introduced.

METHODOLOGY OF THE PAPER

Particularly the following theoretical methods that are based on the logic of cogitation are used within the paper

- a) method of deduction;
- b) method of induction.

The method of document analysis and other information source analysis are also used. Comparative analysis and the method of synthesis is a part of the paper methodology too. Besides, it was not possible to avoid the utilization of method of intuition.

RESULTS AND DISCUSSION

Defining public administration

It is hard to stipulate a perfect definition of public administration, however the majority of definitions and approaches of various scientific disciplines agree that, in general, public administration is a specific kind of purpose-built activities. Czech administrative law and administration science context differentiates public administration defined in so called material (functional) way and the public administration defined in so called formal (sometimes „institutional”/ „organizational”) way. a) In the *material way*, public administration is defined as a complex of all administrative activities that relates to governance on all of its levels (these activities are closely related to the so called „public interest” / „public affairs” content. This approach defines public administration as a specific type of social management activities. b) In the *formal way*, public administration is understood to be a complex of concrete institutional subjects of public administration (authorities/offices/administrative bodies etc.), whose activities differ significantly from activities of legislature and judicature (the so called negative definition of public administration). These administrative subjects are furthermore separated into the group „state administration” and the group „self-government”. Both of these ways of defining public administration are claimed not to be perfect, however they are mutually linked and cannot be strictly separated. Within the material definitions of public administration the discussion has been enormous. The recent debate has focused particularly on the differences between the terms public administration and public management (especially with reference to the concept of New Public Management and the con-

cept of (Good) Governance).¹ The discussion has been led especially along the following line: „*The challenge is whether it is possible to find forms where public service organisation can combine user orientation and responsiveness with democratic accountability to politicians and citizens.*”² The claimed differences, negatives or other part of such discussions will not be a part of this paper, for the other factor is more relevant particularly for the cross-border and European integration administrative context – the principles of public administration.

Principles of public administration – theory and the European context

In general, the word „*principle*” refers to a basic or general opinion, theory, direction, rule or presumption. In the thesis, principles of public administration activities will be understood as basic values of public administration functioning. This concept corresponds to the normative character of the meaning of the word. Such *principles may be distinguished in two ways*

a) in their *ideal level* – principles of public administration as basic values of its ideal functioning;

b) in their *empirical (observable) level* – principles of public administration as basic values of its real functioning.

In the paper, the usage of the word principle will refer to the meaning of a). Directions of the real functioning may certainly differ from the ideal level. However, according to the diction of public administration reform documents of many countries, the effort to secure the convergence of a) and b) is apparent. In their ideal form principles creates a *qualitative reference framework of public administration activities without any regards to the form of these activities*. They relate especially to the functional aspects of public administration – the responsibilities of public administration subjects, however, they also influence the institutional (organizational) aspects of public administration. Their aim is to *create an ideal basements of behavioral patterns of public servants* who are the real determinants of every public administration activity. These principles have been developing since the very beginnings of public administration. In presence they are considered to be a *convergent aim in the process of approximation of law* (especially the administrative law) of states that recognizes similar values (particularly of democracy). One of the aims is for example the so called *European Administrative Space*. Principles may be considered to be an important instrument for „*administrative law globalization*” especially as part of the first two phases of approximation as defined by Pomahac – he recognizes the following three phases of approximation of law

1) the phase of harmonization (with an emphasis on convergence and harmonizing of heterogeneous legal procedures and criteria);

2) the phase of standardization (with an emphasis on choice and recommendation of adequate models and principles), and

3) the phase of unification (with an emphasis on interconnected above mentioned attempts with an aim to create a

¹ See for example Hughes, Owen E. Public Management And Administration - An Introduction /Third Edition. New York: Palgrave MacMillan 2003, or Citizens And The New Governance - Beyond New Public Management (Editor: Luc Rouban; Netherlands : Amsterdam: IOS Press 1999, IOS Press), or Pollitt, Ch., Bouckaert, G. Public Management Reform - A Comparative Analysis / Second edition, New York: Oxford University Press 2004.

² Greve, C., Jespersen, P. Kragh. New Public Management and its Critics. Alternative Roads to Flexible Service Delivery to Citizens? In Rouban, L. (Ed.). *Citizens and the new governance - Beyond New Public Management*. Amsterdam: IOS Press 1999, p. 148.

higher types of innovations not only in the field of legal order, but also within the ways of legal order implementation in different socio-economic, political and institutional environment.³

Particularly the following documents that stipulate the set of principles that should be somehow inherited to contemporary public administration have gained the cross-border importance (at least within the European context):

a) *European principles for Public Administration* (OECD 1999) speaks about the following principles that result from the general consensus on the key components of the called good governance without any regard to legal tradition and differentiation of systems of governance of a state: reliability and predictability (legal certainty or judicial security), openness and transparency, accountability, efficiency and effectiveness;

b) *European governance - white paper* of the European Commission (2001) apparently contains an effort to make the process of policy making more accessible to people and organizations. The importance of participation that was a marginal part of former documents is stressed here - „*Reforming governance addresses the question of how the EU uses the powers given by its citizens. It is about how things could and should be done. The goal is to open up policy-making to make it more inclusive and accountable. A better use of powers should connect the EU more closely to its citizens and lead to more effective policies.*” (p. 8) This document stipulates the following five principles - „*Each principle is important for establishing more democratic governance. They underpin democracy and the rule of law in the Member States, but they apply to all levels of government – global, European,*

national, regional and local.” – openness, participation, accountability, effectiveness, coherence.

The reflections of the mentioned documents may be found also in the *Treaty establishing a Constitution for Europe*, particularly in the following articles: article I-46 (principle of representative democracy), article I-47 (principle of participatory democracy), article I-50 (Transparency of the proceedings of Union institutions, bodies, offices and agencies), article II-101 (right to good administration) and article III-398 („*In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration.*”). The possible contradictions among the principles mixes that may be part of the practice will not be discussed here (e.g. among the principles of openness/transparency/participation and the principle of economy). The following text will relate to the aim of the paper to introduce the theory and practice of the principles that have a potential to enhance the participation within the decision/policy-making chain of public administration (or public management) with reference to the ICTs utilization.

ICTS AND PRINCIPLES FOR ENHANCING PARTICIPATION – THEORETICAL BACKGROUND

During the development of information and communication technologies, the ideas of their practical utilization for public administration purposes and more efficient and effective functioning have appeared. Nowadays, such ideas are covered especially by terms like *e-government* or *e-governance*. The usage of these terms is probably unified only within individual international organizations. However, it is possible to claim, that both of the terms are related to *attempts of information and communica-*

³ Pomahač, R., Vidláková, O. *Veřejná správa*. C. H. Beck, Praha 2002, p. 48.

tion technologies utilization for fulfillment of principles of modern public administration activities, particularly by

a) simplification, speeding, reduction of costs ... (overall „improvement of quality”) of the activities within the public administration – this aspect has two dimensions – it relates to the

- inner world of a single administrative subject (individual authority etc.);

- interrelationships of multiple administrative subjects within public administration system.

b) simplification, speeding, reduction of costs ... (overall „improvement of quality”) of (external) relationships between a subject of public administration and an addressee of its activities, whereas such claims are based on following prerequisites that have not been all empirically verified yet

- the electronic world facilitates that public administration can function in a cheaper, faster ... and more responsive way;

- new information and communication technologies may make transactions with information available wherever and whenever;

- new information and communication technologies may make the communication inside and outside public administration easier etc.

Besides the terms like e-government/e-governance „e-democracy” is mentioned in relation with the ICTs utilization in the field of public administration. The term e-democracy is used in relation to miscellaneous attempts to democratize the democracy through the utilization of new information and communication technologies. Also in this area the terminology is not uniformed and the elements of these attempts can be found also in the usage of terms like e-government / e-governance. However, such a usage always expresses attempts to create a transparent (electronic) state that should serve as an intermediary of a dia-

logue between citizens and other social groups and subjects of public authority and to make the form of the representative democracy closer / mixed with the form of the direct democracy – it means the government by the people, that is an important prerequisite for the increase of a probability, that everything will result in the government for the people. The main aim of these new forms of democracy is to „to break down the virtual Berlin Wall which has traditionally existed in constitutional democracies between the represented and their representatives.”⁴ In this field, the research has started quite recently. For example the DEMO-net project is a very young part of it.⁵ Electronic public administration relates especially to the mentioned functional aspects of public administration. Because of accountability issues, however, it cannot be separated from the institutional aspects. Within the public administration, its electronic form is linked to a group of activities that facilitate the service for the citizenry on the non-profit basements. In my opinion (that can be supported by theoretical and practical experience from the Czech Republic and from abroad) the potential of ICT in public administration is reaching the highest importance particularly in the practice of the following expressly internationally termed principles (in the inner as well as external practice of public administration):

a) *Principle of openness and principle of transparency.* For example the mentioned document European Principles for Public Administration defines these principles as follows: „*Openness suggests that the administration is available for outside scrutiny, while transparency suggests that,*

⁴ Colemann, S.: UK Citizens Online Democracy. An Experiment in Government - Supported Online Public Space. Dostupný z www: <<http://www.ukonline.gov.uk>> or <<http://siyaset.bilkent.edu.tr/goldemocracy/uk.htm>>.

⁵ <http://www.demo-net.org>.

when examined closely, it can be „seen through” for the purpose of scrutiny and supervision.” The European Governance speaks about the principle of openness in the following way – „*The Institutions should work in a more open manner. Together with the Member States, they should actively communicate about what the EU does and the decisions it takes. They should use language that is accessible and understandable for the general public. This is of particular importance in order to improve the confidence in complex institutions.*” This document of the European Commission explicitly uses the *principle of participation* that is defined as following: „*The quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain – from conception to implementation. Improved participation is likely to create more confidence in the end result and in the Institutions which deliver policies. Participation crucially depends on central governments following an inclusive approach when developing and implementing EU policies.*” The desire to reinforced culture of consultation and dialogue is emphasized.

b) *Principle of effectiveness.* There is no difference to be found in definitions of this term. According to the document European Principles for Public Administration, effectiveness basically consists of ensuring that the performance of public administration is successful in achieving the goals and solving the public problems set for it by law and government. The mentioned European white book then claims that Policies must be effective and timely, delivering what is needed on the basis of clear objectives, an evaluation of future impact and, where available, of past experience. Effectiveness also depends on implementing EU policies in a proportionate manner and on taking decisions at the most appropriate level. The

relation to the *concept of principal-agent (agency theory)*⁶ that is linked to the issues of *asymmetric information* and *moral hazard* must be stressed here.

c) If we term the public administration principles according to the very recent trends, it may be possible to add for example the following principles to the previous list: *principle of quality, principle of professionalism and principle of communication and feedback.*

Simultaneously with the utilization of managerial trends in the public administration organizations and with regards to the mentioned principles, *the need to develop more responsive and better quality public administration* for the benefit of all citizens on the one hand, and the link between economic development and the existence of a stable, professional and efficient public administration on the other is widely recognized.⁷ The aim of such efforts is particularly the enhancement of legitimacy of public administration activities and of the related trust of all stakeholders in public ad-

⁶ See for example Hillman, A. L. *Public Finance and Public Policy: Responsibilities and Limitations of Government*. Cambridge University Press 2003, p. 212

- „We recall that a *principal-agent problem* is present whenever a principal, who should be the decision maker, cannot entirely control the behavior of an agent to whom tasks or decisions have been delegated... The principal-agent problem is the *result of* (1) differences in objectives of the principal and the agent and (2) imperfect monitoring and control of the agent by the principal. The reason for imperfect monitoring can be that the principal does not observe the behavior of the agent or that actions taken by the agent may not be verifiable by the principal. There is then a problem of asymmetric information: the agent knows what he or she is doing, but the principal cannot monitor or observe the agent's actions. A principal-agent problem is solved when the principal can design an incentive scheme for the agent so that the agent is led to behave in the way that the principal whishes. There is no assurance, however, that an incentive scheme to solve a principal-agent problem can always be designed.

⁷ Caddy, J.; Vintar, M. Building better quality administration for the public: Case studies from central and eastern Europe. Slovakia: NISPAcee 2004, p. 9.

ministration and a State or a international or a supra-national organization itself.

Participation is inevitable here. Its importance can not be omitted for the following reasons

- no ambiguous definition of quality that can be applicable in all spheres of the complex set of administration activities exists. The theory recommends that the basements of the quality management should be seen in negotiation of stakeholders;⁸

- the quality of public administration activities cannot be defined by public administration itself in the modern State, rather, it should be defined on the bases of interaction with stakeholders⁹.

ICTS AND PRINCIPLES FOR ENHANCING PARTICIPATION – EXAMPLES OF PRACTICE

Some kind of form of the right of participation is always a part of constitutional documents of a democratic country that acknowledges values of democratic rule of law. In the case of the *Czech Republic* the following constitutional provisions that guarantee rights of citizens that are relevant to the topic of this paper should be stressed:

a) paragraph 1) of the article 1 of *the Czech Constitution*¹⁰: „*The Czech Republic is a sovereign, unitary and democratic, law-abiding State, based on respect for the rights and freedoms of man and citizen.*”

⁸ See for example Gaster, L., Squires, A. 2003. *Providing Quality in the Public Sector*. Philadelphia - Maidenhead: Open University Press 2003

⁹ See the literature related to the concept of bureaucracy - especially the critiques of the Weber's concept - in the Czech language, particularly this book plays a role as a summary of most of these concepts: Keller, J. *Sociologie byrokracie a organizace*. Praha: Sociologické nakladatelství 1997.

¹⁰ The English version of the Constitution of the Czech Republic (Act no 1/1993) can be found here: <http://www.psp.cz/cgi-bin/eng/docs/laws/constitution.html>.

b) paragraph 1) of the article 2 of the Czech Constitution: „*The people are the source of all power in the State; they exercise it through bodies of legislative, executive and judiciary power.*”

c) paragraph 3) of the article 2 of the Czech Constitution: „*State power shall serve all citizens and may be applied only in cases, within limits and by methods defined by law.*”

d) paragraph 4) of the article 2 of the Czech Constitution: „*Everybody may do what is not prohibited by law and nobody may be forced to do what the law does not instruct him to do.*”

e) article 4) of the Czech Constitution: „*The fundamental rights and freedoms shall be protected by the judiciary power.*”

f) paragraph 1) of the article 2 of *the Charter of Fundamental Rights and Freedoms*¹¹ („Charter”): „*The State is founded on democratic values and must not be bound either by an exclusive ideology or by a particular religion.*”

g) paragraph 2) of the article 4 of the Charter: „*Any limits placed on fundamental rights and freedoms may be governed only by law under conditions set by this Charter.*”

h) paragraph 1) of the article 17 of the Charter: „*Freedom of expression and the right to information are guaranteed.*”

i) paragraph 4) of the article 17 of the Charter: „*The freedom of expression and the right to seek and disseminate information may be limited by law in the case of measures essential in a democratic society for protecting the rights and freedoms of others, the security of the State, public security, public health, and morality.*”

j) paragraph 5) of the article 17 of the Charter: „*Organs of the State and of local*

¹¹ The English version of this constitutional legal document of the Czech Republic (Act no 2/1993) can be found here: <http://www.psp.cz/cgi-bin/eng/docs/laws/charter.html>.

self-government shall provide in an appropriate manner information on their activity. The conditions and the form of implementation of this duty shall be set by law.”

k) paragraph 1) of the article 18 of the Charter: „*The right of petition is guaranteed; everybody has the right to address himself or herself, or jointly with other individuals, organs of the State or of local self-government with requests, proposals and complaints in matters of public or other common interest.”*

l) paragraph 1) of the article 21 of the Charter: „*Citizens have the right to participate in the administration of public affairs either directly or through free election of their representatives.”*

m) paragraph 2) of the article 21 of the Charter: „*Elections shall be held within terms not exceeding statutory electoral terms.*” and paragraph 3) of this article: „*The right to vote is universal and equal, and shall be exercised by secret ballot. The conditions under which the right to vote are exercised are set by law.”*

Such constitutional provisions are specified by the acts. In regards to the attempts of enhancing participation, particularly the *act on free access to information* must be stressed here. Legislative anchorage of the right to access information is considered to be an important prerequisite of many principles fulfillment that can be deduced from the context of democracy or democratization. Democracy, respectively the process of democratization „*requires public participation in informed discussions on matters of common public interest. It also demands that citizens have the means to exercise control over the administration in order to promote its efficiency and deter corruption. A democracy must therefore ensure openness within the public administration and guarantee the right of pub-*

*lic access to official information”*¹² According to Pierre E. Trudeau „*Democratic progress requires the ready availability of true and complete information. In this way people can objectively evaluate their government’s policy. To act otherwise is to give way to despotic secrecy.*” Only the anchorage of the right to information within the legislation in its constitutional or lower legal level in a form of general or special legal norms is not satisfied. The level of law realization, that means especially the activity, not the passivity, is much more important. This is often forgotten by the public administration side as well as by the side of the legislature (if we abstract from the right of public administration subjects to pass the law), as well as by the side of the citizenry. This negative is also a part of the Czech practice. The importance of the monitoring of the right to information practice has to be stressed especially because of the regard to the following that was claimed already by Weber: „*every bureaucracy tries to amplify the supremacy of the erudite professionals by the concealing of its knowledge and intentions. Bureaucratic administration has always a tendency to be an administration that excludes the public. Bureaucracy hides its wisdom and its activities from a critique as it is just possible... The term „official secret” is its specific invention and bureaucracy does not stress anything else so much, although in many areas it is not substantiated.*”¹³ The perfect legal framework for the freedom of information may be created, however its effectiveness (in the meaning of the so called legislative effectiveness) may be zero or negligible.

¹² (Swedish) Ministry of Justice. The Swedish Approach to Public Access to Documents, p. 1. Available here: <<http://www.statskontoret.se>>.

¹³ Weber, M.: Autorita, etika a společnost (Pohled sociologie dějin). Praha: Mladá fronta 1997, p. 85.

Because of this, the (external - participation - as well as internal) monitoring of the right to information that tries to analyze the legal effectiveness by utilizing various instruments may be considered to be the very important part of the law realization (eventually the superstructure of this realization). *By the provisions of the acts related to freedom of information, the electronic form of providing information may be affected positively in the following way* – it can bring benefits of electronic providing of information – in the form of a clear of

- public information and clear definition of duties to make public information electronically accessible;
- requirements of the application for information (for example the act of Hong-Kong prescribes a special form for this application);
- a duty to inform about the receipt of the electronic application for information;
- a mechanism of protection against an inactivity of public administration subjects and by the clear definition of sanctions in the case of nonfulfilment of prescribed duties of public administration subjects;
- central authority/independent controlling institution for the monitoring and protection of the right to information.

However, it may also influence the practice *negatively* - it can bring detriments to the right to information democratic ideas especially by a blankly definition of the fees requested for the access to information - this can deepen the so called (*digital*) divide or the *democratic deficit*. Some problems of the right to information practice and that means also the challenges for the practice are apparent from the *annual reports of the Canadian information commissioner* that may inspire comparative analyses of practice

in different countries.¹⁴ The *electronic facilities that enhance the participation* (e-participation) within administrative decision/policy-making are *very limited in practice of the the Czech Republic*. E-participation ideas are not even an explicit part of the Czech strategic document related on the information policy (e-Česko 2006). It may be claimed that in the majority of cases that may occur within all levels of the Czech public administration (central/regional/district¹⁵/municipal) it exists only in the form of e-mail communication between the public and the relevant public servant. The *question if it is sufficient* is remaining, particularly with comparison to the foreign attempts in this area. For example the DEMO-net project that has started on 1 January 2006 is a very young part of it.¹⁶

¹⁴ The reports are available here - http://www.infocom.gc.ca/reports/section_display-e.asp?intSectionId=340.

¹⁵ District offices as „decentralized bodies of state administration with general competence” (act 425/1990) or later as „administrative authorities that exercise state administration within administrative territories that are called districts” have been abolished by 31. 12. 2002. However, the district as an territorial unit is still existing and is important for territorial competencies of some institutions (according to the act on territorial administrative segments of the Czech republic from 1960).

¹⁶ DEMO-net is a Network of Excellence project funded under the European Commission's sixth framework programme: Information Society Technologies IST (FP6-2004-27219). The project will be funded for 4 years and has a detailed workplan for the first 18 months. The overarching objective of DEMO-net is to strengthen scientific, technological and social research excellence in eParticipation by integrating the research capacities of individuals and organisations spread across Europe. The intention is to advance the way research is carried out in Europe with respect to quality, efficiency, innovation and impact to overcome the currently fragmented approach to eParticipation in this important European research area. The network with this overall objective will provide a major contribution to the strategic goals set by the European Council. See <http://www.demo-net.org>.

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