THE CITIZEN AS A CONSUMER OF SERVICES PROVIDED BY PUBLIC ADMINISTRATION UNDER POLISH PUBLIC LAW

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ABSTRACT

Alongside civilization development, public administration takes on the responsibility for a growing range of public services. One of the most important functions of contemporary Polish public administration, through which an important part of duties of the modern state is performed, is the function referred to as *servicing administration*. Its features (including citizen-orientation, equality and universality of access, social demand for rendered services) predispose servicing administration to play an increasing role in the total of functions of public administration. The subject matter and manner of implementing these services, both directly by public administration bodies, as well as on their behalf by non-state actors, bring the citizen (individual) to the role of the consumer. To illustrate adapted aim of the study this paper is focused on the constitutional basis for the verification of services provided by administration, and description of character of modes of verification of services (petitions, complaints and proposals).

INTRODUCTION

One of the most important functions of contemporary Polish and European public administration, through which an important part of duties of the modern state is performed, is the function referred to as *servicing administration*. This term is understood as administration's activity involving direct meeting of the various needs of individuals, both through

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tangible and intangible goods.[1] The administration thus appears here as an entity providing services that meet said needs of citizens, while the latter act - in the formal or functional sense - as consumers of these services.

It should be noted that the function understood in this way - historically speaking - was neither first, nor principal that the administration implemented. Servicing administration was formed in fact as a result of socio-politico-economic changes taking place on the European continent (especially in the nineteenth century) while its doctrinal sources are to be found especially in the findings of French and German science. It is there where concepts that constituted a response to the changes taking place in the liberal state were formulated - indicating a need to expand the scope of state benefits for citizens and to adopt the meeting of most vital needs of citizens (both individual and collective) as the subject of activity.

The reevaluation of the role of the state and its administration performed then indelibly inscribed in the directory of European administration's functions the activity consisting in providing services to citizens. What is more, it can be said that the separation of servicing administration is not only an expression of recognition of the increasing role of public administration in the process of meeting the needs of citizens – it is also a proof of recognition that meeting the needs of citizens constitutes an important, or even structural, element of organization and functioning of modern public administration.

Noticing the importance of these issues is reflected in contemporary Polish science of administrative law, the manifestation of which may be even some definitional approaches to public administration. And so, for example, according to Jan Boć *public administration means the meeting, adopted by the state and implemented by its dependent bodies as well as by*

1 Paweł Chmielnicki, Świadczenie usług przez samorząd terytorialny w Polsce. Zagadnienia ustrojowoprawne, 36 (Warszawa 2005).

local government bodies, of the collective and individual needs of citizens, resulting from the coexistence of people in the community.[2]

Placing emphasis on the function of benefits for citizens finds its profound axiological justification. There is no doubt that the primary value of administrative law is the good of man. For Jan Zimmermann this thesis means that *"administrative law is to serve the good of man, which can be considered its primary, essentially sole, duty and the sense of its existence.*"[3] The good of man (individual) is coupled in administrative law with the common good – "*the good of man will therefore be translated into individual interest, and the common good into public interest. There also the general good will translate into specific categories, such as life, health, safety, etc*."[4]

HISTORICAL CONTEXT OF RAISING THE SATISFACTION OF HUMAN NEEDS TO THE RANK OF A PUBLIC ADMINISTRATION FUNCTION

The genesis of modern functions of European public administration is sought in the liberal state,[5] doctrinal foundations of which were: private property, freedom of the individual and restrictions of state tasks. The concept of the negative state formulated then limited the role of the state in principle to two functions: external (defense against external threats) and internal. The latter was to rely on ensuring security and public order based on private property (the state - night watchman), individual freedom and development of the individual and the operation of laissez faire.[6] As a

2 Jan Boć, *Pojęcia* (Chapter I), *in* Administracja publiczna, 10 (Jan Boć ed., Wrocław 2003).

3 *Everything else* – Zimmermann continues – *administrative structures, relationships between these structures, competences, forms of operation, all regulations, etc., serve this only purpose. See* Jan Zimmermann, Aksjomaty prawa administracyjnego, 77 (Warszawa 2013).

4 *Supra* note 3.

5 The term "liberalism" first appeared in use in the nineteenth century - originating from the Latin word "libertas" meaning freedom.

6 The creator of this slogan - adopted later by economic liberals – was Vincent de Gournay, a thinker close to Physiocrats. The laissez faire expressed the attitude of expecting he state to allow interested parties to act freely, allowing also for the transience of things and phenomena. *See* Hubert Izdebski, Historia myśli politycznej i prawnej, 148 (Warszawa 2013).

result, the state has adopted as a principle that the primary responsibility for meeting the needs rests with the citizens themselves.[7]

However, characteristic for the initial phase of the nineteenth-century liberalism, citizens' expectations in relation to the state focusing on the protection of private property and the implementation of the principle of freedom underwent a gradual transformation in the second half of the century. The needs of the people (individual and collective) increasingly shaped the intensifying processes of industrialization, urbanization and technological progress. This resulted in revaluation of existing doctrinal concepts. Current passivity towards the needs of citizens - in line with socio-economic-political and, more broadly, cultural changes - began to give way to the expansion of active functions of the state and its administration, which became the organizer of state benefits for citizens.

The turn of the nineteenth and twentieth century resulted in the conception of a school of thought called public service (*service public*) in France - one of the most distinguished concepts for the development of the European doctrine of administrative law, including the formation and evolution of the function of servicing administration. *Service public* was a consequence of transformations that were taking place in the liberal state (development of social needs, the emergence of civil rights), significantly broadening the scope of state benefits for citizens.[8] However, it was only the 30s of the twentieth century that brought - clearly expressed in the German doctrine by Ernst Forsthoff – a conceptual structure of servicing administration (*Leistungsverwaltung*) and securing livelihood matters (*Daseinsvorsorge*). From then on, on the basis of the German science of administrative law the former of these concepts will designate a state function bringing generally understood benefits to the citizen, as well as

7 Zbigniew Czarnik, Jan Posłuszny, *Zakład publiczny* (Chapter VII), *in* System prawa administracyjnego – Podmioty administrujące, Vol. 6, 424-425 (Roman Hauser, Zygmunt Niewiadomski, Andrzej Wróbel eds., Warszawa 2011).

8 *Supra* note 7, at 426.

a directory of devices at the disposal of the state, aimed at fulfilling its servicing functions.[9]

The dynamic development of servicing administration falls for the second half of the twentieth century and is related to the replacement of liberal and fascist doctrines with new doctrines: socialism, neoliberalism, and especially the *Welfare State*. The latter - shaped by experiences of the great economic crisis of the 30s of the twentieth century - was introduced in the vast majority of Western European countries and its main centers were the United Kingdom (where theoretical foundations of the *Welfare State* were laid by John Maynard Keynes) and Sweden (where a special role was played by a winner of the Nobel Prize in economics - Gunnar Myrdal). This ideology, assuming the duty of the state with regard to ensuring that all citizens enjoy a minimum of physical and civilizational prosperity, with time became close not only to social democratic programs but also to social liberals, evidencing the coming closer in modern times of trends of thought once contrary to one another.[10]

As a result of the processes synthetically outlined here, basic functions performed by modern public administration were formed. Firstly, the ordering-regulating administration,[11] under which classic police state functions are performed - related to the protection of public order and collective safety, which are an attribute of each country. It is worth noting that for many centuries this was the main function of state power which housed the use of imperious instruments, especially police rules and bans and administrative permits, as well as maintaining relevant services, guards, inspections and other institutions upholding public order and collective

9 Paweł Chmielnicki, *Supra* note 1, at 30-31.

10 Hubert Izdebski, *Supra* note 6, at 218-219.

11 The content of this function in the later period of the liberal state – as noted by Małgorzata Stahl – consisted of: execution of laws, application of law in the form of administrative acts, secured by the system of guaranteeing the rights of citizens (headed by the administrative judiciary). *See* Małgorzata Stahl, *Pojęcie administracji, jej cechy i funkcje* (Chapter I), *in* Zofia Duniewska, Barbara Jaworska-Dębska, Ryszarda Michalska-Badziak, Ewa Olejniczak-Szałowska, Małgorzata Stahl, Prawo administracyjne – pojęcia, instytucje, zasady w teorii i orzecznictwie, 18 (Warszawa 2002).

safety. At the same time, this area of operation of public administration from the very beginning entailed the question of public burdens (personal and property) borne by members of the community.[12]

Alongside civilization development, public administration to an ever greater extent takes on the responsibility for a growing range of public services – of the social type (in the field of education, protection of health, social welfare, culture, etc.) and of a technical nature (mass transport, water and sewage works, light and heating, urban cleaning and many others). Thus, servicing administration is being shaped. As noted in the Polish doctrine, "*the role of public administration in this regard may vary. At least it may entail responsibility for the standard of services provided by the private sector (...), it may also involve direct arrangement of public services of various kinds, and may even cover provision thereof through service-providing institutions that belong to the public sector (public utilities and administrative facilities)*."[13]

In the twentieth century the third of the functions of modern public administration was formed. It is because the state begins to encroach with intervention on the field of economic life, taking the role of a regulator of economic development to protect the economy from collapse. What features here are both a new application of traditional police and regulatory instruments (permits, quotas, etc.) as well as growing participation of the state in managing the national economy and an increase in direct participation of state ownership in the market. Along with this and given the significant concentration of private capital – as noted by Hubert Izdebski and Michał Kulesza – "*follows the development of the institution of protection of competition and the increasing role of public authorities in protecting the market against monopolistic tendencies*." In turn, in communist countries, "*the state took over the management of the entire economy and the social*

12 Hubert Izdebski, Michał Kulesza, Administracja publiczna – zagadnienia ogólne, 99-100 (Warszawa 1998).

13 *Supra* note 12, at 100-101.

services sector after the expropriation of private owners of production assets and public utility property."[14]

In Poland, after the Second World War, in connection with the construction of a completely new political system, public administration has become one of the major forces of the nationalization phenomenon, and later also of management, which led to the acquisition of almost all agendas of public life. Nevertheless, it was not able to conduct them well and to duly meet social needs. [15]

THE ESSENCE OF SERVICING ADMINISTRATION

Despite the permanent place of the function of servicing administration in the science of administrative law[16] and its increasing role in the practice of functioning of public administration, questions and concerns about proper preparation of administration to implement this function in legal, functional and praxeological terms are still valid. The expression of the latter was accurately voiced by Tadeusz Kuta stating that where it comes to individual needs in the classic sense, administration continues along the established path and meets those needs. In turn, where it comes to "*needs sprouted on the ground of a new civilization, to needs that are to be met in a mass way, there are no sufficiently shaped concepts-tools and legal institutions. In particular, relationships occurring between the administration and citizens in the course of meeting these mass needs have no clear legal shape*."[17]

In the modern doctrine of administrative law a catalog of basic traits and characteristics of modern servicing administration is being formulated. And so - based on the position of Zbigniew Czarnik and Jan Posłuszny - it

14 *Supra* note 12, at 101-102.
15 Jan Boć, *Supra* note 2, at 21.
16 For the subject of servicing administration in the Polish science of administrative law *see in particular*: Regulacja prawna administracji świadczącej, (Karol Podgórski ed., Katowice 1985), Tadeusz Kuta, *Zaspokajanie potrzeb socjalno-bytowych i oświatowo-kulturalnych obywateli* (Chapter II) *in* System Prawa Administracyjnego, Vol. IV, (Teresa Rabska ed., Ossolineum 1980), Tadeusz Kuta, Funkcje współczesnej administracji i sposoby ich realizacji (Wrocław 1992).
17 Tadeusz Kuta, Funkcje…, *Supra* note 16, at 17-18.

should be noted that: 1) the subject of servicing administration (to which it addresses its activities) is man, and the purpose thereof is the provision of services meeting his needs - both individual and collective; 2) the key element is provision of services; 3) it uses the organizational and legal form of a public company and an enterprise for carrying out its tasks; 4) it acts primarily by way of non-imperious forms; 5) legal relations between the servicing administration and citizens are not strictly regulated by provisions of the law (often the basis are general tasks or competence standards); 6) "an important constitutional canon of servicing administration" in equality in access to services; 7) its public availability should also be "the canon of servicing administration"; 8) due to the deficit of services in many areas of servicing administration, it is characterized by competition of access thereto; 9) its premise is continuity and durability, having at their basis "the need to create a guarantee of the real meeting of present and future needs", and finally, 10) the distinguishing feature is the material breadth and considerable variation of performed tasks.[18]

An important part of the services provided to citizens by public administration constitute the so-called "services of the public utility nature". These are tasks the aim of which is day-to-day and continuous satisfaction of collective needs of the population through the provision of publically accessible services, the implementation of which (arrangement or direct provision) falls largely within the competence of self-government administration (local government units – self-government municipalities, districts and provinces). The public availability means here that services are treated as public goods of a non-exclusionary character and available to all concerned. In turn, their day-to-day and continuous performance stems from the nature of the needs satisfied through them (basic needs, occurring on a mass scale). This activity is, in principle, non-commercial, that is undertaken not for profit, and thus - on the basis of Polish legal regulation – it does not have the nature of an economic activity. Despite this, in terms of the provision of services of a public utility nature (under the Polish antitrust

18 Zbigniew Czarnik, Jan Posłuszny, *Supra* note 7, at 428-429.

law) local government units are treated as traders. The rationale is that they provide services available on the market, thereby entering into business relationships with other participants of trading - including consumers.[19]

Attributing local government units the features of a trader on a local market takes into account the fact that they take measures of a regulatory nature (e.g. shaping a specific tariff and pricing policy, including the determination of the amount of prices and fees for municipal public utility services, as well as for the use of buildings and facilities of public utility). What is more, the arrangement of specific public utility services - which is absolutely legally reserved for the benefit of local government units - is in fact a fully extracted, separate competent market on which local government units have a monopolistic position. As a result of having a monopolistic (dominant) position on the market of organizing public utility services, local government units cannot abuse it by acting in a manner inconsistent with the provisions of the Antitrust Act.[20] This particularly boils down to the ban on abusing the dominant position by imposing exorbitant prices to contractors, to identifying discriminatory rules for collecting these prices and fees, as well as to breaching the duty to provide consumers with reliable, truthful and complete information or to the use of prohibited contractual clauses (abusive clauses).

THE CONSTITUTIONAL BASIS FOR THE VERIFICATION OF SERVICES PROVIDED BY ADMINISTRATION

As previously indicated, actions of public administration bodies under the so-called servicing administration are based on the day-to-day and continuous satisfaction of collective needs of residents by providing publically available services. The subject matter and manner of implementing these services, both directly by public administration bodies, as well as on their behalf by non-state actors, bring the citizen (individual)

19 Marek Szydło, Ustawa o gospodarce komunalnej. Komentarz, 132-148 (Warszawa 2008).

20 *Supra* note 19, at 327-328.

to the role of the consumer.[21] Consumer status does not affect, however, the fact that such services are provided in the scope of delivery of public duties assigned to administration operators by provisions of the generally applicable law. Public tasks covering the sphere of providing publically available services are governed in Poland by rules included in standards of administrative law and implemented in the form of non-imperious actions.[22]

The activities of public administration authorities in the sphere of said services, as well as inaction or excessive length in terms of their implementation, in the context of the democratic rule of law[23] resulting from Art. 2 of the Constitution of the Republic of Poland (hereinafter: the Constitution)[24] are subject to review not only in the sphere specific to private law, including standards governing the rights of consumers, but also with the help of legal measures aimed to verify the activities of state authorities and the staff and organizational units they oversee.

The right to exercise legal measures that serve the citizens to verify administration actions taken in non-imperious forms is guaranteed by Art. 63 of the Constitution. This provision states that "Everyone shall have the right to submit petitions, proposals and complaints in the public interest, in his own interest or in the interests of another person - with his consent - to

21 Cf.: Małgorzata Stahl, *Pojęcie administracji, jej cechy i funkcje* (Chapter I), *in* Zofia Duniewska, Barbara Jaworska-Dębska, Ryszarda Michalska-Badziak, Ewa Olejniczak-Szałowska, Małgorzata Stahl, Prawo administracyjne – pojęcia, instytucje, zasady w teorii i orzecznictwie, 19-20 (Warszawa 2004).

22 Hanna Knysiak-Molczyk, Skarga kasacyjna w postępowaniu sądowoadministracyjnym, 222-223 (Warszawa 2009). Cf. also judgement of the Supreme Administrative Court (SAC) in Warsaw of 4 October 2011, II OSK 1508/11, Centralna Baza Orzeczeń Sądów Administracyjnych (CBOSA), source: www.nsa.gov.pl.

23 For complementing New Public Management principles, based on the democratic rule of law see: Barbara Kudrycka, *W sprawie wdrażanie zasad New Public Menagement do prawa administracyjnego, in* Instytucje współczesnego prawa administracyjnego. Księga jubileuszowa Profesora zw. dr hab. Józefa Filipka (Kraków 2001), *see also* Jerzy Supernat, *Administracja publiczna w świetle koncepcji New Public Menagement, in* Jednostka, państwo, administracja – nowy wymiar (Rzeszów 2004).

24 Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws (Pl) No. 78, item 483 as amended). For the topic of the democratic rule of law in the Constitution *see*: Bogusław Banaszak, Konstytucja Rzeczypospolitej polskiej. Komentarz, 16-38 (Warszawa 2009).

organs of public authority, as well as to organizations and social institutions in connection with the performance of their prescribed duties within the field of public administration. The procedures for considering petitions, proposals and complaints shall be specified by statute."

THE DESCRIPTION OF CHARACTER OF MODES OF VERIFICATION OF SERVICES PROVIDED BY ADMINISTRATION

As regards the scope of the provision of Art. 63 of the Constitution, significant importance is also demonstrated by Art. 8 para. 2 of the Constitution. In accordance with the aforementioned provision of Art. 8 para. 2, the provisions of the Polish Constitution apply directly, unless otherwise provided. Submitting petitions, complaints and proposals constitutes, therefore, a manifestation of implementation of the constitutional right, but further handling thereof requires regulation of a regular statute[25] i.e. by way of a legal act, which in the system of sources of Polish law[26] bears the highest legal force after the Constitution[27]. The act which currently governs the procedure for submitting petitions, complaints and proposals is the Code of Administrative Procedure (hereinafter CAP).[28] This Code, by the provisions of Book VIII, in fact regulates only the principles and procedure for submitting complaints and petitions.[29]

The procedure for complaints and proposals is a kind of summary (simplified) proceedings, which is reflected in the fact that there are no parties to the proceedings, decisions addressed to the complainant or

25 Janusz Borkowski *in* Barbara Adamiak, Janusz Borkowski, Kodeks postępowania administracyjnego. Komentarz, 820 (Warszawa 2005).

26 In accordance with Art. 87 para. 1 of the Constitution the sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations. Pursuant to Art. 87. para. 2 of the Constitution sources of universally binding law of the Republic of Poland include, in the territory of the organ issuing such enactments, enactments of territorial (local) law.

27 Bogusław Banaszak, *Supra* note 24, at 436.

28 Act of 14 June 1966 Code of Administrative Procedure (Journal of Laws (Pl) of 2013, item 267 as amended). *See also*: Andrzej Matan *in* Grzegorz Łaszczyca, Czesław Martysz, Andrzej Matan, Kodeks postępowania administracyjnego. Komentarz, Vol. II, 440 (Warszawa 2007).

29 As of 5 September 2015, the Law on petitions (Journal of Laws (Pl) of 2014, item 1195) passed on 11 July 2014 will enter into force.

applicant are not issued but the latter are only notified of internal steps aiming to clarify the circumstances which cause the submission of the complaint or taken in connection with the submission of the proposal. There is no instance course in these proceedings. The institution of employing legal remedies is not applied either. Nevertheless, the principle of conducting the proceedings under the jurisdiction of a given authority, determined according to the subject of the petition, complaint or proposal, maintaining objectivity and the duty of a comprehensive clarification of the case, is still binding.[30]

The procedure for complaints and proposals as regards administration's non-imperious actions, undertaken, among others, in the sphere of servicing administration was clearly separated by the Polish legislature from an administrative procedure *sensu stricto*, also regulated by CAP provisions. The latter governs the procedure aimed at concretization of general and abstract norms of substantive administrative law through an imperious individual administrative act (administrative decision), issued for a specifically designated recipient and in individually designated circumstances.

The Polish legislator introduced in the Code of Administrative Procedure the principle of *sensu stricto* administrative proceedings, ending in issuing an administrative decision, as well as other types of Polish administrative proceedings (tax, enforcement, court-administrative) before the complaint-proposal mode.[31] This means that before acknowledging the admissibility of the latter one should consider whether the said separate modes will find application in a given case in the first place.

30 *See*: Janusz Borkowski, *Supra* note 25, at 15. *See also* Supreme Administrative Court (SAC) judgement of 11 February 2009, II OSK 1391/08 and SAC decisions of 27 October 2010, II OSK 1500/09 and of 5 November 2010, 2132/10, as well as decisions of the Provincial Administrative Court (PAC) in Rzeszów of 25 July 2005, I SA/Rz 117/05, CBOSA.

31 *See*: Małgorzata Jaśkowska, *in* Małgorzata Jaśkowska, Andrzej Wróbel, Kodeks postępowania administracyjnego. Komentarz, 918 (Warszawa 2009), Andrzej Matan, *Supra* note 28, at 458.

The procedure in cases of petitions, complaints and proposals constitutes, therefore, a special kind of institutional social control implemented with respect to the administration, which aims to verify activities in principle not subject to challenge in separate proceedings.[32] This procedure demonstrates an administrative nature, which involves the fact that the entities with jurisdiction to conduct it are public administration authorities as well as the fact of the mode of settling thereof by way of a factual (material-technical) act[33] and the said procedure was conceived as a certain supplement to the administrative procedure and a kind of a substitute measure for judicial review of administrative decisions.[34]

THE SUBJECT OF PETITIONS, COMPLAINTS AND PROPOSALS AS LEGAL MEASURES TO VERIFY NON-IMPERIOUS ACTIONS OF ADMINISTRATION

As regards the definition of a complaint and its personal scope, it should be noted that the Polish legislator, in the provisions of generally applicable law, has not included the legal definition of the concept of a complaint. In Art. 227 CAP it explained, however, that: "The subject of the complaint may be, in particular, negligence or inappropriate performance of duty by the proper body or its employees, breaches of the rule of law or the interests of the complainant, or the lengthy or bureaucratic processing of cases."

Against the background of this provision, it is raised in Polish literature of the law that the subject of the complaint can be therefore any legal and factual actions or lack of actions by competent authorities or their employees.[35] The term "in particular" used in the content of Art. 227 CAP means that the naming done in this provision is of a solely exemplary nature, and the subject of the complaint may also be other circumstances from which

32 Przemysław Kledzik, Postępowanie administracyjne w sprawie skarg i wniosków, 9 (Wrocław 2012).
33 *Supra* note 32, at 24.
34 Andrzej Wróbel, *in Supra* note 31, at 83, *see also* Andrzej Matan, *Supra* note 28, at 443.
35 Zbigniew Janowicz, Kodeks postępowania administracyjnego. Komentarz, 520 (Warszawa 1999); *similarly* Jacek Lang, Współdziałanie administracji ze społeczeństwem, 79 (Warszawa 1985).

stems dissatisfaction with the manner or excessive length of action, or with inaction of the authority or its employees that the complaint concerns.[36]

Based on the analysis of provisions of the Polish law regulating the merits of a universal complaint and its subject matter, this remedy can be defined as a de-formalized measure of a posteriori inspection of implementation of public tasks by government administration bodies, local government bodies and social organizations bodies or their employees, attributable to each operator and dealt with by way of a factual act in single-instance summary proceedings of an administrative nature.

As in the case of complaints, the Polish legislator did not enter into the provision of the law the legal definition of a proposal either, restricting itself in Art. 241 CAP to indicating only its material grounds. According to the content of the abovementioned regulation: "The object of the proposal may be in particular cases of improving the organization, strengthening the rule of law, streamlining the work and the prevention of abuses, protection of property, better meeting the needs of the public."

Furthermore, as in the case of the previously cited Art. 227 CAP, also in the content of Art. 241 CAP the phrase "in particular" pre-determines that the listing of cases contained therein has only an exemplary value,[37] which does not, thus, foreclose the possibility of submission of the proposal for other reasons.[38]

The doctrine indicates that all circumstances, situations and events, in any way individualized, that constitute the object of interest of state authorities due to their designated tasks need to be treated as a subject of a proposal.[39]

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36 *See*: Andrzej Matan, *Supra* note 28, at 449.

37 *See also* Janusz Borkowski, *Supra* note 25, at 853, Andrzej Matan *Supra* note 28, at 469, Piotr Przybysz, Kodeks postępowania administracyjnego. Komentarz, 454 (Warszawa 2009).

38 Przemysław Kledzik, *Supra* note 32, at 109.

39 Jacek Lang, Wnioski obywatelskie w administracji państwowej, 33 (Warszawa 1976). *See also* Janusz Borkowski, *Supra* note 25, at 852.

As a basic feature that distinguishes the complaint from the proposal one must point to the fact that the proposal, displaying marks of a measure actuating a posteriori inspection, addresses "the matters of the past," that is the effects of measures taken by public administration authorities or lack thereof due to excessive length or inactivity.[40] In turn, the proposal concerns activity of the future, not performed yet. Moreover, unlike the complaint, the proposal also includes positive assessment of the expected task.[41] The subject of the proposal can be therefore any matters that are conducive to optimizing the operation of the administration.[42]

In terms of the Law on petitions passed by the Polish parliament, but not yet in force, one can indicate that the legislator also for this institution restricted itself to determining its material scope without including the definition of a petition in the provisions of the law. In accordance with Art. 2 para. 3 of the Law on petitions, the subject of the petition may be a request, in particular to amend provisions of the law, to take a decision or other action in the case concerning the petitioner, collective life or values requiring particular protection in the name of the common good, remaining within the scope of tasks and competences of the recipient of the petition. The petition within the meaning of the provisions of the said law, therefore, displays a collective character, in contrast to complaints and proposals which tend to have an individual character.

CONCLUSION

On the basis of Polish science of administrative law the function of servicing administration has its own well-established place - that has grounds in historically developed, European processes of evolution of the role of the state and its administration. Its contemporary features (including citizen-orientation, equality and universality of access, social demand for rendered services) predispose servicing administration to play an increasing

40 Jacek Lang, *Supra* note 39, at 132, Janusz Borkowski, *Supra* note 25, at 830.
41 Jacek Lang, *Supra* note 39.
42 Piotr Przybysz, *Supra* note 37, at 454.

role in the total of functions of public administration. Under Polish legal conditions, citizens - who are consumers of servicing administration's services - may not only question the actions taken as regards them with the assistance of institutions of private law, but also verify their accuracy in the sphere of public law. This concerns in particular the inactivity or excessive length in respect of such actions and their improper implementation. These measures are not only to serve the undermining of implemented or not implemented public services, but are primarily designed to enforce their implementation, to improve quality, and to lead to optimization of activity of administration financed from public funds.